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TEACHER-ADMINISTRATOR-SCHOOL BOARD RELATIONSHIPS.

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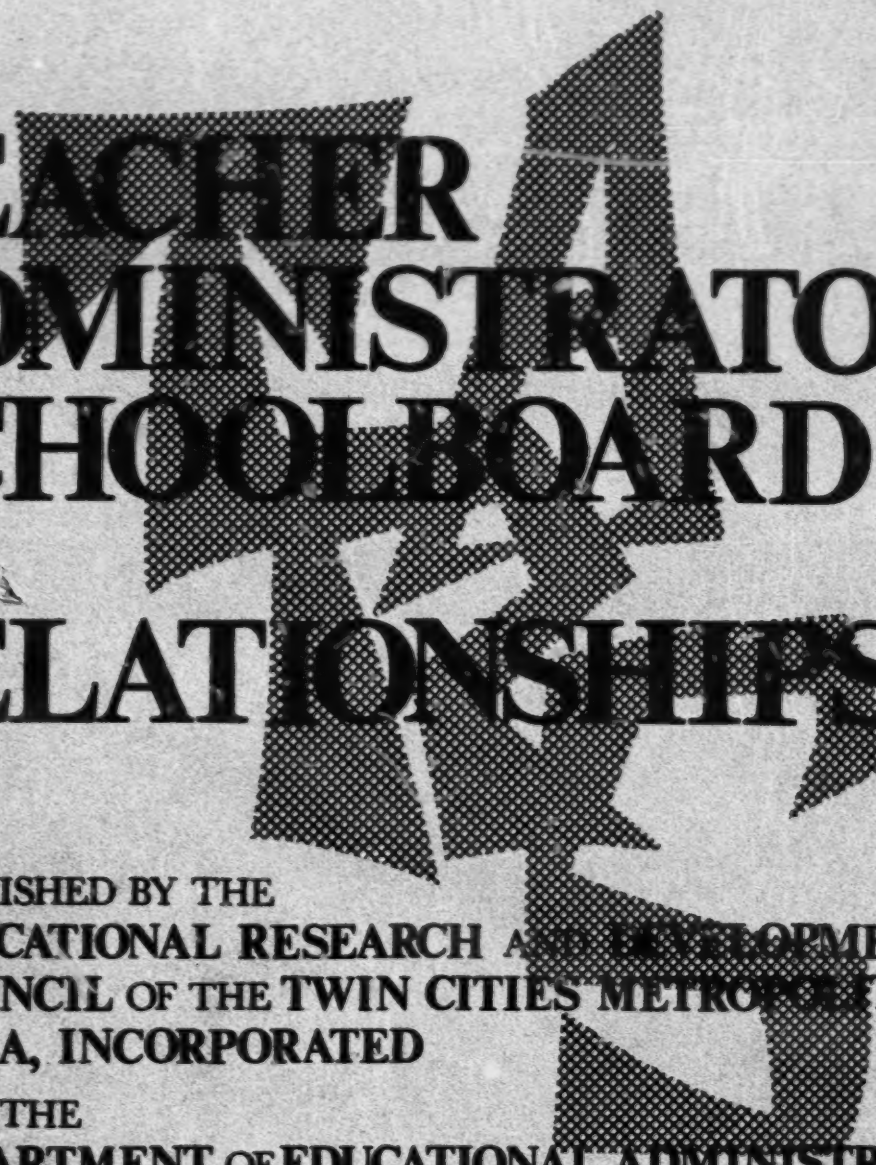

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EDUCATIONAL RESEARCH AND DEVELOPMENT COUNCIL OF THE TWIN CITIES METROPOLITAN AREA, INC.

Van D. Mueller
Executive Secretary

and the

DEPARTMENT OF EDUCATIONAL ADMINISTRATION

Clifford P. Hooker
Chairman

January, 1967

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## FOREWORD

The Educational Research and Development Council of the Twin Cities Metropolitan Area, Inc., and the Departments of Educational Administration and Industrial Relations, University of Minnesota served as sponsors for a Workshop on Teacher/Administrator/School Board Relationships held on October 12-15, 1966 at Hudson, Wisconsin.

This professional development program was designed to provide school administrators and school board members with opportunities to analyze the existing situation and clarify issues and changes that lie ahead in the field of employer-employee relationships in public education. Participants in the workshop were over 70 school administrators and board members from Twin Cities area school districts.

Fifteen major presentations were made during the workshop. All presentations dealt with topics directly related to better understanding of the process of collective bargaining. The content of this publication is taken from the transcripts of the workshop proceedings.

Staff of the Educational Research and Development Council deserving special mention for their work in assisting with the Workshop are: Dale Johnson, Donald Porter, Jeremy Hughes, Jerry Mansergh, John Maas and Patricia Williamson. Special note is also made of the significant planning and coordination accomplished by Dr. Cyrus Smythe, Professor of Industrial Relations at the University of Minnesota.

Special thanks are accorded Mrs. Helen Warhol for her editorial assistance in the preparation of this publication.

Van D. Mueller,
Executive Secretary
Educational Research and
Development Council of
The Twin Cities Metropolitan Area, Inc.
and Workshop Coordinator

# INTRODUCTION

CYRUS F. SMITH
University of Minnesota

The collective bargaining process is not limited to those persons covered by the National Labor Relations Board. The strongest union in our country today is the American Medical Association. Its strength is caused by its policies of limiting the supply of doctors, controlling its membership by policing its own ranks, and by acting collectively in terms of fees, statements on issues, etc. The basic reason for getting together for collective bargaining is economic. Some employee groups do band together to achieve not only these economic aims but some common social purposes.

A framework for analyzing the effectiveness of the economic bargaining power of any group is contained in these five components:

1. The members must be irreplaceable for one reason or another. Either the skill itself is so scarce that they cannot be replaced or the employer does not dare to replace them. (Fear of physical violence, public reaction, etc.)

2. The employees must be critical to the operation of the organization. (The telephone workers are an example of a group which lacks the ability to strike because of this point. Automation operates telephones locally and long distance without workers. Equipment can be maintained by supervisors.)

3. The cost of disagreement for the employer must exceed the cost of agreement. (At one time the surplus of automobiles in that industry meant that a strike would have helped the economic position of the employers.)

4. The employees must be keenly aware of the first three points. They must realize that they are irreplaceable, critical to the operation, and that a strike would be much more costly to the employer than the proposed agreement.

5. The employees must have the militancy and cohesiveness to strike.

Examples of groups having these five components and the ability to win strikes are the various construction unions. They have received considerable increases over the past years because their skills are irreplaceable; they are militant on the picket line; they are critical to the operation; the cost of disagreement to the employer is higher than the price of agreement; it is very easy to pass the cost on to the consumer; and the employees fully realize all these points.

Another example is the recent airlines strike of the mechanics. The employees were irreplaceable and critical to the operation. Management figured that the cost of disagreement was worth taking. The union realized its own economic power and militancy. The airlines misjudged the militancy and cohesiveness of their employees; even the union leadership made this mistake.

A situation where all five points were in effect was the New York transit strike. This was in the field of public employment and a no-strike law was operative. However, no serious effort was made to use the law against the transit workers and they won their strike.

Applying these five conditions to public school teachers, the following conclusions may be drawn:

1. Teachers are irreplaceable.

2. Teachers are critical to the operation of the school system.

3. The cost factor is weighted against the employer in a number *of ways--in terms of:*

    a. Cost of political reaction. (The elective process of school board members makes this significant.)
    b. Educational cost or loss in terms of the students.
    c. Fixed costs in terms of building maintenance, etc.
    d. Loss in state aids to the district.

4. Some teachers already realize the first three points and a great many more are beginning to.

5. With each successful contract, points four and five will grow amongst teacher groups.

Employee groups are primarily political groups. Their members join for a purpose, usually economic. Leaders of these organizations are elected through a political process. To survive they make promises and must deliver at least some of them. Their organization must show progress to its members.

Unless school boards think in terms of employee groups as political organiations, they will make gross errors. These organizations are run by political people who because of various pressures from within their group may be irrational or reasonable. Union leaders must assess the strength in their own organizations. Management must assess this strength, too, along with the ability or success of the union's leadership.

If union and management would utilize objectivity on the five major points, there would be no strikes. Misjudgments, but especially emotions, overrule objectivity and then strikes occur. Management traditionally views strikes as an attempt to cut-in on profits. If management views the union emotionally, then the union retaliates. However, often all that needs to be done

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Examples of groups having these five components and the ability to win strikes are the various construction unions. They have received considerable increases over the past years because their skills are irreplaceable; they are militant on the picket line; they are critical to the operation; the cost of disagreement to the employer is higher than the price of agreement; it is very easy to pass the cost on to the consumer; and the employees fully realize all these points.

to avoid strikes is to give the employee group satisfactory recognition. Management still reserves the right to agree or disagree.

Discussing the question of "the right to strike" is a waste of time. If a union can sanction and effect fear of a strike or if they do strike and have the five criteria mentioned, they are going to win. There will be little thought of enforcing the law. The legality of the strike is applicable only as it depends upon the militancy of the group. If the group really has the economic bargaining power--the five points--they can overcome the so-called illegality of the strike.

Management in public education can develop a model of bargaining if they approach the problem with a rational attitude. If school systems revert to 1935 philosophy of private industry and so approach the situation antagonistically, there will be difficulties. To develop a successful relationship, management--school boards and superintendents--must be willing to sit down and talk in equal terms and to discuss problems as each side sees them.

CHAPTER I

# THE LAW PERTINENT TO COLLECTIVE BARGAINING IN THE U.S.

**ARVID ANDERSON**
Wisconsin Employment Relations Board

I thought I might inflict upon you a little limerick defining responsibilities. It goes something like this: A school superintendent is a man who knows a great deal about very little. He goes along learning more and more about less and less until he finally knows practically everything about nothing. A teacher representative, on the other hand, is a man who knows very little about many things and keeps learning less and less about more and more until he knows practically nothing about everything. Now a labor board member, and that's what I am, starts out knowing everything about everything, but ends up knowing nothing about anything due to his association with school superintendents.

Just a word or two more about some malaprops which I may commit during the day but in education you encounter them. One of the most interesting I experienced last week was a fellow who called our office and brought a complaint. He said that his union had exterminated him and he wondered what he could do about it. "Perhaps that's enough before I go way out on a limbo" is another one of these malaprop things.

At a conference like this, and I'm stealing from an expert--Willard Wirtz collects these--one of the public members opened the discussion, saying, "I know this is an academician's point of view, but I've had it in the back of my craw a long time. When an immovable force meets an irreducible minimum the only answer is fault finding under a statute or compulsive arbitration." And another one: "You've really put me through the griddle but don't you realize that a lot of water has gone over the bridge? This problem has a lot of faucets to it." This problem, indeed, has a lot of faucets to it and that's what we want to talk about today.

The Wall Street Journal a little over a year ago in a feature story about negotiations affecting education stated that the underachievers in the collective bargaining process were rapidly moving to the head of the class. I would agree with the description that teachers are underachievers in the negotiating process, but I disagree that they are rapidly moving to the head of the class. However, your presence here today and at similar conferences throughout the nation are plainly evidence that teachers, superintendents, and school boards have found out that at least there's a course offered in the subject, even though some of you have different labels for the process. Preferring professional negotiations in public education, there's not only a course, there are books on the subject. This is an excellent one, Collective Negotiations for Teachers by Lieberman and Moskow. But then I suppose it's not startlingly unusual for an idea which has been the public policy in this country for more than three decades to be accepted some three decades later by education. But then this is most understandable because we're told education is different, and it is in many ways, but one of the ways that it's different

has been the slow acceptance of the process of collective bargaining or negotiations between school boards and their representatives.

Why has this demand come about? It has come about literally because it has been the public policy to encourage collective bargaining in the private sector for three decades by the National Labor Relations Act and many state labor relations laws. Now what has happened is that school teachers, as other public employees, are no longer content to say to their employer, "Please listen to our reason." Teachers are no longer content to be just heard; they want also to be heeded. They're no longer content with the paternalistic employer, no matter how enlightened, to provide for them the things which an administration thinks they ought to have in terms of their conditions of employment. They want the freedom to make their own mistakes, much as an adolescent is no longer satisfied to have the "moldy-oldies" make all the decisions for them. They want the freedom to have something to say about their vocation and about their livelihood. Because of this fact there has been developing throughout the United States, in California, Connecticut, Massachusetts, Michigan, Minnesota, Oregon, Rhode Island, Washington, Wisconsin, Florida, and a few others, various social experiments as to whether the principles and practices which have been developed in the private sector can be transferred in whole or in part to the public sector.

What are these principles which have been established in the private sector regarding collective bargaining? Basically they are (1) the right of public employees to organize and to be represented in collective bargaining by representatives of their own choosing, (2) administrative machinery for the determination of questions of representation, (3) the duty to bargain on the part of public employers and employee organizations, (4) the establishment of certain unfair labor practices for public employers and public employees, including the use of mediation services and in the event of impasse, fact finding or advisory arbitration with non-binding recommendations as an alternative to the right to strike. This is the framework which most of the statutes have taken to date. There are a variety of experiences and administrative machinery established for these procedures, and these machineries will serve as laboratories and guides to the rest of the nation for the establishment of orderly procedures for the resolution of school board and teacher impasses.

But what is the problem in collective bargaining? What are we talking about? Some other definitions might be useful, and perhaps I can give a more simple one. I like to describe the collective bargaining process as a table. When I'm talking about the collective bargaining table, I'm describing it as being supported by four legs, the first of which is wages, or if you prefer, salaries, or any other form of economic benefit whether this is a retirement system, insurance, holidays--you name it.

The second leg is seniority. You may prefer the word tenure or length of service or some other euphemism, but this is what we're talking about--that the people that are in the appropriate collective bargaining unit will have some assurance of preference for opportunities, for promotion, for transfer, against layoff, otherwise qualified, of course, based upon their length of qualified service.

The third leg I refer to covers a lot of territory--that's grievance arbitration. You may refer to it as a complaint procedure, a procedure for the resolution of disputes arising over the interpretation and application of agreements which have been negotiated between an employer and the majority representative of his employees.

Should Bill Jones have the right to transfer to the new school? Should Mary Smith have been assigned five classes of slow-learners, or should she not have been? Should the contract of the football coach be renewed? This sort of thing--grievance arbitration.

Lastly, if you'll pardon the expression--union security. You may prefer the term "check off of dues in order to go to a convention;" you may like the term "agency shop;" you may have some terms about professional rights and responsibilities, but it goes to the subject matter of organizational security.

Now there are other labels that you use in this process. You may use the term "association" or "organization" rather than union. Believe me, as a member of a closed shop, and this is one of the things that we have in Wisconsin, euphemistically known as the State Bar of Wisconsin (you can't practice law in Wisconsin without being a member of the State Bar) whether you call it the State Bar of Wisconsin or whether you call it the Medical Association, or whether you call it some other professional name or protective group, it is a group organized, at least in part, for the improvement of the economic conditions of the profession.

Now, with these four legs on the table you will find that most of the subjects with which you'll be confronted at the negotiating table will concern these areas. Not all of them, for the reason that as professionals, teachers are interested, and I think many of them very genuinely so, just as you are, in the education of the whole child. Thus they are not content to concern themselves with only their own interests. They are interested in negotiating anything that affects educational policy, or anything that concerns education. I don't have the exact phraseology before me at the moment, but these are the objectives stated by both the NEA and the AFT. These are much broader objectives than merely negotiations over salaries and hours in terms of employment. But the statutes and the procedures which have been adopted to date, voluntarily for the most part, have confined the right to negotiate over these areas involving educational policy such as curriculum, choice of text, and the like. There are, admittedly, many gray areas, the number of children in the school room, the school calendar, and countless others.

I want to say what I mean by "professional." My only real quarrel with the term "professional" as applied to education is that teachers aren't paid like professionals, and also that teachers' organizations--and they bear a lot of this responsibility, but so do school boards--haven't established in many areas professional qualifications for teachers. I regret, and I'm embarrassed to say that in my own state, Wisconsin, it will not be until 1972 that it is a condition of employment that a person must have at least a Bachelor's degree before being allowed to teach.

Unhappily even in 1966, 17 per cent of the elementary teachers in the state were still allowed to teach who had less than a four-year education. So teachers' standards, in some instances, are still not professional. I'm not suggesting that degrees automatically mean competence, but the Bachelor and the Master degrees obviously give a much higher assurance that competence exists.

In terms of compensation we pay teachers just about what the average industrial worker in society makes. In Wisconsin and Minnesota factors are about the same, slightly in excess of $6,100 to $6,200 a year. We don't begin to pay them like we do skilled craftsmen. We pay them about $2,000 or $3,000 a year less than the bricklayer, the carpenter, the electrician and plumber, all of whom are very busy building schools with public tax dollars, or have you noticed? We pay them only about half of what we pay over-the-road truck drivers. I'm not making an argument that the other occupations which I've alluded to have been overpaid, but I suggest this value judgment of society as to worth of teachers is one of the reasons why the term "professional" is being challenged and one of the reasons why you're facing the demands for negotiations at the bargaining table.

The advent of collective bargaining or professional negotiations has an impact upon school boards, school superintendents, school administrator relationships. There are those who strongly argue that anybody who suggests that there is a different interest between the school superintendent and the administrators and the classroom teacher is contributing to the treason of the educational concept by driving this wedge. I suggest that if that is treason then there are a lot of people making the most of it because the classroom teacher organizations, whether th t's the AFT or the MEA or the NEA, are anxious to have something to say about their conditions of employment. So the problem arises, "What is the role of the superintendent?" Some people feel, and it's advocated here in the NEA concept, that the superintendent's role ideally should be in the middle of the road, as a middle man between school boards and teachers' groups. But I suggest to you, and not just factitiously that people who stay in the middle of the road get run over. Somebody has to speak for management. In my book that had better be the superintendent and his immediate staff. Whether the superintendent is physically at the table negotiating or whether it is the business manager, the personnel manager, or a team of administrators, is obviously a decision, a management decision, to be made in each locality.

Let me give you some illustrations of conflict that can arise if this is not the case. In my own city we have a very effective management negotiating team composed of a principal of a school who was a former president of the local teachers' group, another personnel director who is a former principal of schools and an officer, if not the president also, of the local teachers' group, and the third, a business manager. All of these people are very competent, but their responsibility is to represent the school board in negotiations. If these people remained and were active members of the local teachers' organization, how could they properly represent the school board in negotiations? While there is some community of interest in salaries, there is also the possibility that there can be conflicts arising over what salaries should be paid. It's been known to happen

in Wisconsin, and I assume elsewhere, that school boards concerned with filling positions are interested in raising the hiring level to be "competitive" to get new teachers. They don't seem to have the same zeal and enthusiasm about raising the compensation of long tenure teachers, even if those teachers have advanced professionally in terms of additional training or experience. Conflicts may develop here. Which role does the school principal or the assistant superintendent take on this issue with the school board? Does he represent the school board's position, or does he represent the teachers' position?

Let's take another situation. Let's assume that there's a new school being built, which I understand happens every now and then, and this is an opportunity for a new teaching assignment, and people who are in the "less desirable" schools, the older schools, the core areas, want an opportunity for new looks. They have long tenure; they apply for the new job. Their principal says, "No, you can't go," either because he doesn't like the person, or more likely because it's good management. He can't denude the core school of the able and the competent language teacher here. "We've got to have this department head in chemistry. You can't go!" If the teacher wants to file a grievance against the refusal of the principal to approve the transfer, and if the principal is the president or major officer in the teachers' organization, with whom does the teacher file the grievance? Regardless of whether the grievance is meritorious or not, I pass no judgment upon this, but I point out these problems of conflict.

Another problem is: What is the appropriate unit for negotiations? Is it all of the schools, all of the non-supervisory teachers in the school district? We think it is. And happily the State of Michigan, which is very active in this area, has agreed with us. Rather than saying it can be done on a school-by-school basis, whether it can be done on an elementary versus high school basis, whether it can be done on a professional subject matter basis, we say it is all the non-supervisory employees of a particular school district.

Another major problem which is of great concern is the concept of exclusive recognition. As public employees, these people are also citizens who have the right to petition their government. They have the right to say, "Please listen to our reasons." But when a majority representative has been chosen to represent such employees in bargaining, that representative is the exclusive representative for the purposes of negotiations, and if you don't have this concept, you will have a great deal of difficulty in negotiations; you will have a system of lobbying; you will have a system of political persuasion, but you won't have a system of collective bargaining.

One of the greatest handicaps, though, in the bargaining process is the concept which public employers have that negotiation means that you must agree. Management has the right to make proposals and doesn't have the obligation automatically to agree with whatever requests are put forward by the teachers' groups. Negotiation implies that there will be a

reasonable period of good faith exchange as to what can be done and what can't be done, and reasons why concessions are refused. If no agreement is reached, the management has to make a decision. A school calendar has to be adopted, a budget has to be adopted, people have to be hired, assignments have to be made. So negotiation does not mean the necessity of an agreement.

What about impasses? How do you resolve impasses? In the private sector, you perhaps strike. In the public sector this isn't permitted. I don't suggest that it doesn't happen. What I want to suggest to you is that there is a framework by which this process can work in the public sector which is different from the private sector. The decisions affecting wages, hours, and conditions of employment that I've alluded to in the private sector are essentially economic decisions. In profit-moded economy the employer has to make a profit or he won't be around to pay the benefits. The decision-making process about salaries, hours in the public sector, including schools, are essentially political decisions in the best sense of that term. Thus, if this proposition is valid then impasses can be resolved, and we suggest that this is not only a theory but we have some evidence now by the use of fact-finding with recommendations or advisory arbitration. Whether or not those recommendations are accepted in total or whether they serve the framework for resolving the dispute is not absolutely critical. The idea is that a system of informed persuasion will work. I suggest to you that there's no area of the public service where it can be better tested than in education. This is your business, this is the business of the people you hire, informed persuasion and reasoning.

If it doesn't work, then we will see the outcropping of work stoppages. Lest any of you arrive at the conclusion that the enactment of collective bargaining laws means strikes and therefore you shouldn't have such laws, I suggest to you that whether or not there are laws passed on the subject will not mean that strikes will go away. They're going to be here. The question is whether you have orderly procedures for dealing with them. The question is whether the orderly procedures have a sense of opportunity for decision-making to be made by the local school board and by the local teachers' organizations or whether these decisions will be imposed by outsiders, by a form of compulsory arbitration. But even compulsory arbitration will not guarantee that there will not be any strikes or work stoppages.

Now, also there is an assumption that the interjection of a third party, particulary in the form of a labor board, is bad business, and we shouldn't have anything to do with them. Education is different. The various statutes around the country are providing many experiments as to whether this concept is right or wrong. Michigan has a "labor relations statute." So does Wisconsin. So does Massachusetts. Rhode Island has got it sort of both ways. Connecticut has special legislation for teachers. I think it should be of interest to you to know that the Wisconsin Education Association which opposed the adoption of this statute has now stated that they will oppose any efforts to repeal the statute, because they feel apparently they have been fairly treated. Now I'm not suggesting to you that the one procedure is right and the other is wrong, but I suggest to you who think that education is totally different than problems in the police department or the fire department, there is a special responsibility of proving they are correct by establishing procedures which will meet these demands for negotiations which are going

to persist. They also ought to be mindful that they also employ a large number of persons in the maintenance of the schools who do go out on strike. Such work stoppages can prevent school from being taught and they had better think about procedures which will solve their total employment relations problem.

What we're suggesting here is a statute or a procedure which specifically provides the right to organize, the right to exclusive representation by a majority representative, a clear designation of the role of the supervisor, the duty of the public employer to recognize the majority represesentative, the right of the public employer organization to negotiate, the duty to negotiate in good faith by both the public employer and the public employee organization, machinery for the enforcement of contracts--and that includes people who want to quit, and I understand teachers now and then give you a little short notice on such subjects. This might be something you might bargain about. You can severely limit the rights of teachers in this situation. A system of grievance arbitration to determine disputes arising during the term of employment, mediation services to resolve impasses, fact-finding, or some of you may say fault-finding, with recommendations or advisory arbitration to resolve impasses, and I suggest the specific prohibition of the right to strike but with discretionary authority to take remedial action in case strikes occur. Unless any of you think that I make a distinction between strikes and sanctions as a broad principle, I do not. Both are a concerted refusal to work. There is difference in application. There may be a question about some form of sanctions as to whether or not they would be equated with a strike, but there isn't any substantive difference on the basic concept of a concerted refusal to work, which is what a strike is.

What is advocated, then, is a system of collective bargaining, but I am not urging, and I don't want to be understood as urging the transfer of the unilateral conditions of employment from the school board to the school teachers' organization. What we are seeking is a balancing of public employer and employee relations by negotiations with the proper respect for the public interests. If this can be achieved, and I suggest to you that it has worked in the private sector. Look at our giant corporations who are extremely efficient even though they deal with labor unions. Our political democracy can be strengthened by the improvement in the salaries, hours, and conditions of employment in the public sector. I don't want to suggest to you either that the process of professional negotiations, collective negotiations or collective bargaining is a total cure-all for the problems of education. But it is an instrument for improving the quality of education and the quality of our society. I believe that negotiations <u>can</u> be an instrument for fulfilling the promise of the current century, as you educators say, becoming the century of the educated man. If you share these convictions then you will join in the social experiments that are now abounding throughout the country. Make whatever contribution you can to make the system work, because this next decade will tell us whether these social experiments are one of the answers to improving the quality of education in our society or but another step to a more fully administered society. I think the answer is going to be that collective negotiations will work, and I hope you will want to be a constructive part in this experiment.

CHAPTER II

## THE LAW PERTINENT TO COLLECTIVE BARGAINING IN MINNESOTA

THOMAS P. LEWIS
University of Minnesota

My topic, the Minnesota law relative to teacher collective bargaining, is in its period of gestation. The issues that form my topic are before the Supreme Court of Minnesota today in a case that arose last spring in which the Minneapolis School Board, the labor conciliator, the CMEA, and the MFT participated. I feel rather like a doctor who is called before a large gathering to describe the sex of a baby during the seventh month of the mother's pregnancy. The doctor would know that if he simply makes a guess and tries to go into some detail on the basis of that guess, that within a couple of months everything he says might be rendered irrelevant. So I think he would make the choice, and I'm going to make the choice of assuming the baby might be a boy or it might be a girl, and try to discuss briefly the nature of each. If the baby is a boy, the source of law governing teacher collective bargaining will be the 1965 Minnesota Public Employee Labor Relations Act. This Act had its genesis back in 1951 and I'm not sure that I can tell you a great deal which you don't already know about it because coincidentally or otherwise, school administrators, teachers, and school employees seem to be on the stage sooner for every major development in the evolution of this Act. The rudimentary provisions of the Act were passed in 1951 two months after the Minnesota Supreme Court upheld the right of school janitors to strike. The Legislature quickly responded by outlawing strikes by all public employees but they did affirm the right of public employees and their representatives to meet and confer with their public agency employers. The law also in 1951 created or authorized the creation of something known as an adjustment panel to resolve grievances between individuals and their public employers.

In 1957 the law was amended by affirming the right of public employees to join labor organizations and to choose representatives and the mechanism by which these representatives might be chosen was created. The law authorized the labor conciliator to conduct elections for this purpose. The weakness of this law was uncovered in 1962 in another case involving school employees, this time teachers. In the case growing out of the dispute in Richfield over teacher representatives, the Supreme Court held that while the conciliator might conduct an election if there otherwise was some unit in which the representative might be chosen, he nevertheless lacked power to designate an appropriate unit. Now without this power, the conciliator's power could be meaningless, unless, of course, the parties might agree what was an appropriate unit. The Education Association and the Federation of Teachers sometimes are unable to agree. As a result of this case, renewed efforts were made to overhaul the public employees' labor relations act; efforts were unsuccessful in 1963 but successful in 1965. Prior to the 1965 session, the governor of the state appointed a committee to study the problem and make recommendations for changes in the Labor Relations Act. This committee filed a report and a draft of legislation which in almost every detail became the 1965 Law. The basic changes recommended by this committee included power in the labor conciliator to designate an appropriate unit within which an election could be held for the purpose of choosing a representative. It included

definitions of representative rights. It included certain conciliatory powers which were given to the labor conciliator in the event of an impasse or a deadlock between the parties, and it broadened the power of the function of the adjustment panel. This draft of legislation was passed by the Legislature but with one exception of which you're very familiar. The Legislature excluded teachers from the coverage of the 1965 Legislation, or more properly speaking, the 1951 and 1957 legislation as amended in 1965.

This resulted apparently from the fact that a minority report was filed when the Governor's Committee filed its report. This report was filed by the president, a member of the Committee, the president of the Minnesota Education Association. Following the gist of the minority report, the Legislature enacted a companion bill at the same time it amended the Employee Labor Relations Act. Under this legislation all teacher organizations could participate on a more or less equal footing in conferences with their public employers, and conciliatory efforts were assigned,in the event they were needed,to the Commissioner of Education rather than to the Labor Conciliator.

As you know, Governor Rolvaag vetoed the bill applicable only to teachers, but not the legislation applicable to all public employees except to teachers. So the upshot is that teachers have no coverage under the literal language of the Labor Relations Act. It was this exclusion of teachers that was involved principally in the litigation that ensued last spring. The MFT challenged the exclusion on equal protection grounds urging that the law was unfairly discriminatory and that it made provisions for every public employee in the state including University professors, except public school teachers. The lower court agreed with this contention and struck Section 7 of the 1965 legislation which excluded teachers as invalid. Technically then the law of Minnesota at this instant is that the 1965 Act applies to teachers. But the CMEA appealed the decision and the Supreme Court restrained any efforts by the labor conciliator to put into operation the machinery that would be necessary in order to select representatives within the City of Minneapolis so, practically speaking, the status quo has been maintained.

Now we will know in a couple of months, perhaps sooner, whether the Supreme Court agrees with the lower court. If it does, then the 1965 Act applies and we can take it from there. That is, we can look to see what the collective bargaining rights of teachers will be. If the court disagrees with the lower court's finding and finds that the exclusion of teachers is valid, then of course the 1965 act won't apply and we will have to look to the common law, to other statutes that govern school boards and to the Constitution perhaps to determine precisely what the rights of teachers might be with respect to collective bargaining. Looking at the salient provisions of the 1965 Act now in somewhat more detail than we did previously, the Act includes essentially the ingredients outlined by Mr. Anderson as the model ingredients of an act with the exception that the role of the supervisor is not particularly spelled out in Minnesota legislation. Enforcement mechanisms are not created, certainly not in any great detail in the 1965

legislation. There is provision for an adjustment panel, but nothing in the Act specifically spelled out just exactly how such arrangements might be enforced.

The first major change of importance in the 1965 legislation in the power that is given to the labor conciliator to designate an appropriate unit within which an election might be held. Incidentally, the committee draft--that is the Governor's Committee's draft of legislation that was passed almost verbatim by the Legislature in 1965--had a provision in it to indicate that the only appropriate unit for teachers would be all the teachers within a district. No discretion was left to the labor conciliator in this respect, but, when the Legislature passed the companion bill for teachers and took out of the major 1965 legislation those parts that would apply to teachers and excluded teachers from any provisions of the Act, they dropped from the section the language that said the appropriate unit for teachers would be the district.

The second major change in the 1965 legislation is a detailed definition of representative rights. The legislation defines two types of representatives, the formal representative, which is the representative chosen by a majority of employees within the unit, and the informal representative or representatives, which can be any organization that represents some minority group of employees within the unit. The Act explains that it is the right of the formal representative to meet and confer with the employer. The word "negotiate" is not used; the word "bargain" is not used; that the right to meet is for the object of reaching a settlement which will govern all employees in the unit. Other sections of the Act provide that in case of a deadlock between the parties or in the event that one of the parties is unwilling to meet in good faith with the other, that the services of the labor conciliator can be invoked by either party.

Another provision of the Act provided that either party may request the appointment of an adjustment panel to assist the parties in arriving at a settlement. Now the adjustment panel, if presented with such a request, would be composed of a member appointed by the formal representative, a member appointed by the employer, and a third member appointed by those two or, if those two are unable to agree, by the senior district judge in the county in which the dispute occurs. The significant thing is that this adjustment panel does have the power to hear the dispute. All parties can participate, including employees in the unit, and make findings and recommendations concerning what the contract terms ought to be. It's advisory, of course, not binding. If this adjustment panel is created, and either party can request that it be, the labor conciliator's jurisdiction is ousted. He exits from the picture. I think if you put this structure together while the words "negotiate" or "collectively bargained" are not employed in the Act we still have something closely approaching collective bargaining in the private sector but not enforced by the power on the part of the employee group to strike.

Other provisions of the Act call for any settlement that is eventually reached to be embodied in a memorandum of understanding or in an ordinance or a resolution, as appropriate. Contract as a concept is not used in the legislation. Finally, the legislation calls for the creation of grievance machinery, machinery by which individual grievances by employees may be resolved. It does this rather indirectly by saying that in any case in which the employing agency

has not created an impartial review system of some kind, the employee may call for the appointment of the adjustment panel to resolve the individual grievance.

Those are the major provisions of law that will govern if the Supreme Court decides that the exclusion of teachers in 1965 is unconstitutional because it's unfairly discriminatory. Let's suppose now for a moment that the court disagrees with the lower court and rules valid the exclusion of teachers. I think to make the problem concrete we might suppose a not-so-hypothetical case in which a teacher organization requests its school board to conduct an election in order to determine what organization represents a majority. It might ask for the equivalent of the formal recognition that's defined in the 1965 legislation. What it wants is to have the majority representative bargain and negotiate and be accepted in this role by the board. The question is "Must the board agree? Can the board agree?" Now if the 1965 legislation doesn't apply, there's no other legislation that would require a board to agree with this request from a teacher organization. So far as I know no one contends that the board would be under legal obligation to provide part of the mechanics that are supplied by the 1965 legislation. The real question I suppose is "Can the board do this?" There's no legislation in Minnesota that says a board can't. There's nothing specifically prohibiting the board either in case law or legislation from conducting an election and choosing a majority representative. The board is given very broad powers by statute to manage the affairs of the school district. It would certainly be possible to imply from these broad powers the power to adopt as a means of governing the district a system in which a teacher organization is recognized as a majority representative after an election.

There are four arguments that are usually urged against a board's taking such action. One is a Minnesota court rule that a government agency cannot delegate to the electorate, except where authorized by statute, the power to make a decision that's committed to the agency. The city can't hold an advisory election to see whether the city ought to act in a certain way if the decision is committed by law to a city council or to the governing body of the city. It seems to me this is not really in point with our problem because the board is not delegating the power to make a decision of policy to anybody. It's rather simply polling the employees to see who, if anyone, is a majority representative.

The second argument is one that is seen in the case law of some jurisdictions built on the idea that the board exercises attributes of sovereignty and that somehow to bargain collectively without some express statutory authorization is a delegation of the board's sovereign power. I perhaps am not the person to state the theory because I've never been able to understand the divine right of kings. I would be inclined to agree. Certainly, the argument strikes me as somewhat fictional. In any event, there's a fairly strong current of authority to the contrary that is evolving now so that the argument may be in its dying day.

The third argument against the board's power to conduct an election to choose a majority representative is based on the claim that if the board does this the rights of the minority will somehow be infringed. If a board chose to conduct an election to recognize in some fashion the majority spokesman, it wouldn't follow that minority spokesmen are to be excluded or silenced. They might be accorded something called informal recognition under which they have the right to confer and make their views known. Any particular individual could be given the right to be represented by an organization of his choice in case he had a grievance. So it's not part of the system necessarily that the minority be spoken for only and solely by the majority representative. But in any event the state legislation in 1965 and our national legislation both proceed on the assumption that it is proper for a majority spokesman to speak for all the employees within a unit, in terms of the basic conditions of work.

The fourth argument is an attorney general's opinion in 1964 ruling negatively on the question I have posed. He said in that opinion that it would be unlawful for a school board to conduct an election for the purpose of selecting a majority representative. But the opinion is based on the fact that in 1964 the labor conciliator had the express statutory power to conduct elections, and this applied to teachers because it was prior to the 1965 exclusion. So the attorney general said that in the face of this express grant of power to the labor conciliator it would be inconsistent to imply a similar power on the part of the board. Since 1965 if the Court holds that the exclusion of teachers in 1965 is valid, the conciliator has no power with respect to teachers, so the basis of that opinion has been undercut. It would seem no longer to stand unalterably in the way of the board's conducting an election.

My assessment then would be that the court may well tell us in two months what the law will be and render anything I say totally meaningless as an estimate of what the law is. But my assessment of this problem is that the board does have the legal power to poll the employees within the unit designated by it to determine a majority representative. I base this largely on the facts that the contrary arguments are archaic, that there is a strong trend toward this kind of power in other jurisdictions, and that there's nothing in the law of Minnesota that I know of that is expressly and specifically inconsistent with such power.

Apart from the question of a board's conducting an election and proceeding to negotiate with a majority representative, I think there can be no doubt that either as a result of the common law of the state or through the constitution of the state and the United States, teachers have a right to organize and, through their representatives or as individuals, to attempt to make their views known to their public agency employer. As I understand it, this goes on frequently today.

CHAPTER III

## REPRESENTATION ELECTIONS, CERTIFICATION, ETC.

**PETER OBERMEYER**
Conciliator, State of Minnesota

The third general session in which I'm the presentor is entitled "Representation Elections, Certifications, etc." I'm going to take a little bit of liberty and expand somewhat on the scope of this. Perhaps the speech could be best entitled "Etc." The total topic which you have is entitled "Teacher/Administrator/School Board Relationships," and it obviously is a large, widespread area. It involves not only relationships with teachers, but I think you have to be aware of relationships with other groups within the school system. This varies from the Minneapolis School System to, say the system at Northfield or at Dundes or something smaller, the point being that there are other employees of a school board besides teachers. The Minneapolis School System deals with between eight to ten different labor organizations, not even counting teachers, so this question of relationship goes much beyond that of strictly teachers.

I think that first of all it's obviously a relatively new area, dealing with teachers as organized groups or dealing with maintenance people as organized groups or with some of your cafeteria employees as organized groups. Of course, the people from Duluth, the Iron Range and Minneapolis have had experience in this area. This is not true for the majority of the school boards or the majority of the superintendents in Minnesota. This is a relatively new phenomenon, as it is all over the United States. You take certain positions when you deal with employees on the unorganized basis. You have your policies. When you are faced with employees demanding certain changes and demanding them through a labor organization or a teacher organization, there are certain things that change.

Secondly, you get into an area of what is, or what will be, the effect of organized employees. I think this is most important. The question being, "What is or what will be the effect of organized employees on the education system and on the individual employee and the student within the system, if any?" This is something that will obviously have to be considered as you move through this period into the future. Now, you're faced with the question of "What does the employee organization in this bargaining relationship do to the administrator? What effect does it have on you as either the superintendent or as the chairman of the board of education or whatever the particular position may be?"

First, it obviously presents some loss of authority or power to make unilateral decisions. You are now faced with a group of employees that want to join with you in making some of the decisions that you in the past have made. Now this gets into the question with which we deal constantly: management rights. Before you have organized employees, be it a grocery store or a manufacturing plant, you have complete control within certain limits set by statute on hours of work, sanitation, health. When you have a group of organized employees, certain changes are made in your unilateral rights to do certain things. There is an obvious loss of the ability to

make certain unilateral decisions.

Point two follows from this--that some of these decisions involving conditions of employment will be made jointly--and this is the basis of collective bargaining. Decisions once made in the past from the top down are now made together, jointly. You come out with a contract or memorandum of understanding calling for certain conditions. You have questions about non-teaching time. Can you require or can you assign work that's non-teaching? School dances, patrolling halls, and things like this? You're going to have questions facing you dealing with textbook review. Now this gets to be real sticky. Do you put something like this in a contract? You're going to find language covering these problems in the collective agreement or the memorandum of understanding. So this is a point for superintendents particularly, and board members as well. There will be certain changes made with this process called collective bargaining. One of them is this ability to make certain decisions or state certain policies. It's done jointly. We do it together now.

Where you have a public employment situation, can you have collective bargaining? I say NO, you cannot have collective bargaining as I interpret it, as I understand what collective bargaining is, in the public employment area. Now I make this statement based on one concept--the concept of the right to strike and the right to lockout. When you don't have the right to do either of these two, labor does not have the right to strike, management does not have the right to lockout, you do not have collective bargaining as I define collective bargaining. Now obviously there are school boards represented here today that deal with employees and employee organizations. They certainly do enter into collective bargaining, but it is a form of collective bargaining not identical to that type of collective bargaining we find in private employment. Where you do not have the right to lockout and where you do not have the right to strike, you do not find the type of collective bargaining that you find where you do have these rights.

Now in Minnesota there are two areas of employment: public employment and the charitable hospitals where management is prohibited from locking out and labor is prohibited from striking. The type of bargaining we find in these two areas is different than the type we find in private employment. A strike or lockout is what drives them toward a settlement. A strike is a penalty to both parties. A lockout is a penalty to both parties--to labor and management. It's the dread or the attempt to avoid this penalty that I feel makes collective bargaining work and pushes toward a settlement. Now sometimes the penalty of a strike or a lockout is less than the penalty of going into a settlement which one particular party wants. In other words, if wage demands are just too high, you take a strike. You just say, "We might as well close the doors." Labor may say, "We'll take a strike before we'll give up on union shop. It's that important. We will make that sacrifice."

When you do not have the right to strike and the right to lockout, the push for the two parties to reach an agreement is gone. Labor or management has no penalty to pay. The result is a form of bargaining that is collective and we can call it collective bargaining. You go back and forth, you justify your position. I think you will find much more reliance on the use of evidence--figures don't lie, but liars figure--but there still will be the reliance on justifying one's position. This type of bargaining, I'm sure, will

be a great change for the conciliator or the labor relations man that hasn't been experiencing collective bargaining in public employment.

Now when you remove this right to strike as one of the characteristics of public employee bargaining, you add one other characteristic. You add the political consideration. Boards obviously are political in nature. They're elected by the people. Three thousand teachers have a certain amount of political strength, and they are going to get involved in politics because this is one area where they have some power. Generally speaking, they're a group of registered voters. This will be a factor that you'll have to consider as negotiators because this is a device which they have. You have politics. You have to admit it and you'd better be ready to accept it. It's a factor you must be aware of as administrators and as board members. Politics are going to get involved in your negotiations....

The Division of Conciliation has dealt primarily with county, municipal, and other types of governmental units, although we have dealt with school boards in certifying and in conducting conciliation meetings with their non-teacher employees (maintenance, building tradesmen, hotel and restaurant, cafeteria-type people), but not with teachers. Now since then we've processed close to 150 various types of cases from representation to conciliation. We feel that the Public Employees Labor Relations Act has so far been very successful.

In the year prior to July, 1965 we had approximately 15 cases go to what is called the Adjustment Panel. Since July of 1965, we've had two, and one was kind of an unusual case that went that way because the parties always agreed to do it that way. So we find that conciliation has been substituted for this adjustment panel, which we think is good. You don't have someone else settle it. We think that the responsibility should be between the parties. We tell this to almost everyone. Don't let us get involved in it because you have an outsider trying to give you advice. If you have to, fine. This is why we're here. We're not looking for work, believe me. We feel there are areas where it's necessary, but there are thousands of contracts settled every year that a conciliator or a mediator doesn't get anywhere near. There are obviously hundreds that he does, but we'd like to see that the parties assume some of this responsibility. When you have one party that doesn't, then you have problems and that's where we come in. But we think that the record so far has been reasonably good. We have had one kind of work stoppage. It was in Duluth. This was taken care of through conciliation.

I'd like to discuss the teachers' case as I understand where it is now, the teachers' case that came out of Minneapolis. This will be basically a layman's understanding of what happened. The first step was a petition from Local 59 AFT to us, to the Division, requesting a determination of a bargaining unit and an election. We responded that teachers are excluded from coverage of certain portions of the Labor Relations Act. Now teachers are not excluded from <u>all</u> of the Act, only from certain portions of it. They're covered by the no-strike provision and certain other provisions. We refused to act--that was Step Two. In Step Three, the AFT petitioned the District

make certain unilateral decisions.

Point two follows from this--that some of these decisions involving conditions of employment will be made jointly--and this is the basis of collective bargaining. Decisions once made in the past from the top down are now made together, jointly. You come out with a contract or memorandum of understanding calling for certain conditions. You have questions about non-teaching time. Can you require or can you assign work that's non-teaching? School dances, patrolling halls, and things like this? You're going to have questions facing you dealing with textbook review. Now this gets to be real sticky. Do you put something like this in a contract? You're going to find language covering these problems in the collective agreement or the memorandum of understanding. So this is a point for superintendents particularly, and board members as well. There will be certain changes made with this process called collective bargaining. One of them is this ability to make certain decisions or state certain policies. It's done jointly. We do it together now.

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Court to have our decision reversed and to order me to hold a hearing and an election. Judge Minenko did so rule, stating that to exclude teachers from part of the Act and yet cover with other parts of it is unconstitutional. This decision should be read.

Following the decision by Minenko, the MEA appealed then to the Supreme Court. At the time of the appeal, I took the position that we would, as the Division of Conciliation, like to get started on this and that we would schedule a hearing to gather certain evidence and testimony to enable us to make a ruling on the unit--in other words, what would the appropriate unit be? I was ordered then by the Supreme Court not to do anything until the Supreme Court ruled on the appeal by the MEA. Now the Supreme Court held the preliminary hearings and the oral arguments I believe on October 4 or 5. They have been made, and we are now in the position of waiting for the ruling of the Supreme Court--whether they will uphold Minenko or reverse him. As far as I know, this is the status of the case that involved the Minneapolis School System and the AFT and the MEA of Minneapolis. *

Do we cut it up on a secondary versus elementary basis? One unit of secondary teachers and one unit of elementary teachers? Do we do it by grades, if it gets to that point? Is that the appropriate unit: first, second, third, fourth, eleventh, twelfth? So you see this gets to be very muddy. Then beyond that, whom do we exclude? Should librarians have their own separate unit? Should counselors? Should the school nurses? I'll say the school nurses should right now, but this is beside the point. Whom do we exclude? Obviously, administrators and superintendents. Where do you cut the line? Now under Minnesota law if we determine that as an example, we will include in the unit all secondary teachers. We will exclude superintendents, principals, and, as an example, maybe department heads. Now there's nothing under Minnesota Statute that prohibits the administrators, the principals, the superintendents, and the department heads from forming their own union, or allying with MEA or MFT and having that unit declared a "bargaining unit"--a bargaining unit of supervisors, if you will, but they have that right under statute. This is the area we get into with unit determination and why it's crucial and why this is where the problem will be: the fight between the two organizations and maybe the disagreement with yourselves on who should be in the unit. It may be on a geographical basis. But in defining this unit, the legislature has given us eight different criteria which we must consider. And these eight criteria cover the waterfront, believe me.

Another problem is the question of exclusive recognition. Labor organizations either represent or they don't. If they do, they <u>exclusively represent</u> and do not get involved with other labor organizations. This can be a headache. You can have fifteen--you can have the Obermeyer-Anderson employee organization who are going to represent only people who have the names Obermeyer and Anderson. I think it's poor; I have to disagree with it because I think it causes confusion more than anything else, and it doesn't answer the real question.

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*Supreme Court reversed the lower court's decision.

Now formal recognition is defined as "shall be granted to any labor or employee organization representing a majority of the employees in the appropriate unit. Formal recognition shall give the organization the right to meet with, confer, and otherwise communicate with a governmental agency for its representative with the object of reaching settlement applicable to all employees of the unit." They are the bargaining agent or the formal representative for all employees. Now this is the procedure that is followed from the time that you are requested to grant recognition, and you may do so voluntarily. If you don't, we enter the picture, and we first determine the appropriate unit. Second, we validate a voter eligibility list; in other words, who are the employees within this unit that should vote? Third, we conduct an election; and fourth, we certify to you the results of the election and state whether the particular organization in question is the formal representative or not--positive or negative certification. Now we've covered two steps; step one was Mr. Anderson's right to join and inform; step two was this recognition procedure.

In step three he states what is called the duty to bargain. The duty to bargain is an unusual section in Minnesota law, and no place do you find the word "negotiate," but you find the term "confer and discuss conditions of employment." Confer and discuss--I don't know if there's any difference--but our experience has been that public employers involved have, in effect, bargained.

Point four is the statement that there should be a public statement or a position taken on unfair labor practices. Minnesota law is very sketchy in this area. It says in 17952, subdivision 2, two things: (1) they grant him the right to join and form, and it says, (2) "It shall be unlawful to discharge or otherwise discriminate against an employee for the exercise of such rights." It goes on..."and the governmental agency or its designated representatives shall be required to meet and confer with the representatives of the employees at reasonable times in connection with grievances and with conditions of employment." This is a statement of duty to bargain. Now the other statement of unfair labor practice comes a little bit later. It says, "It shall be unlawful for any person or group of persons, directly or indirectly, to intimidate or force any public employee to join or to refrain from joining a labor or employee organization." This is the only place in the Act where you have unfair labor practices stated. I think this is a weakness; there should be a statement of policy as to what is an unfair labor practice on both sides, the employer's and employees'.

Point five made by Mr. Anderson is the dispute settlement. This is the second area where the labor conciliator is involved. He is involved first in the recognition procedure. The second area is in that of conciliation or dispute settlement, and this procedure follows somewhat this line. After you have been notified that the labor organization is the formal representative, you enter into negotiations or into discussions with this particular organization. The first step is done on a face-to-face basis, and you conduct your negotiations in an atmosphere, hopefully,

of trying to get along or trying to reach a settlement. This is where I can safely say that 75 to 80 per cent of all contracts are settled, and that's where they should be settled--between the parties. The conciliator likes to be viewed as a fireman, and he only gets involved when there's a fire. It's the 25 per cent where there are problems, where you have a hassle; this, then, is when you go to the conciliator, and either party may request the services of the conciliator. The conciliator's duty is stated in the statute--it's 179521. I think it may be wise just to take a little time and read to you what we're charged with as our responsibility. The law states as follows: "If after a reasonable period of meeting and conferring, the parties are deadlocked, or if the governmental agency or its representative or the employees or their representatives fail or refuse to meet and confer in good faith at reasonable times in a bonafide effort to arrive at a settlement, they then file a petition requesting the labor conciliator to act in the dispute. Such petitions shall set forth the issues of the dispute, the efforts to settle it, and a statement of the failure to reach a settlement." This is included on our basic conciliation form. A labor conciliator shall thereupon take jurisdiction of the dispute and shall fix a time and place for a conference with the parties to the dispute upon the issues involved, and he shall then take whatever steps he deems expedient to bring about a settlement, including assisting in preparing information necessary to an understanding of the issues and of the settlement. Both parties shall confer with the labor conciliator and cooperate with him in his attempts to bring about a settlement.

Conciliation is a very, very informal procedure. There are very few rules and regulations. We sit down and talk, you fight, you are pushed and pulled. Collective bargaining is a real amazing thing, and you work from one extreme with the Nurses' Association to the Longshoremen, and believe me, there's a lot of difference between the two groups, the point being that it's an unusual field. The procedure of this conciliation is, as I say, very, very informal.

The procedure under unit determination and this recognition procedure is somewhat more formal. You take an oath; of course you make certain statements, you can cross-examine; it's a pseudo-court situation. Like any agency, there's a court reporter, evidence is submitted; we even try to keep this reasonably formal, and we don't like to put attorneys out of business, but seeing as how we're not attorneys, we like to have the laymen in there. Maybe we do the best job we can, but attorneys do appear, and this gives it a formal attitude or a formal atmosphere in our hearings and in our unit determinations.

In conciliations it's much more flexible and loose. You try to get to the heart of problems; you try to find out really why you have joint meetings; you have separate meetings; you use many techniques. Interestingly enough, a man from a contractor's association said fatigue becomes a very big factor. It's something to be aware of. We don't like the 24 hour marathons and the 12 hour marathons, although sometimes it's necessary. We go through it now and then.

Now, following the use or the entrance of a conciliator, either myself or anyone of the staff, if settlement is still not reached, the procedure under the law then allows fact-finding. Basically, let me tell you what my understanding and my feeling of what fact-finding is. You meet before this commission, you present your case, document it, and bring in evidence. Both

parties do this. You then submit a written brief of your position. The fact-finding panel cogitates this, pulls and pushes it, and comes out with a decision that at least a majority will sign, recommending certain items of settlement. Basically, the fact-finding commission likes to narrow this down as small as possible. It likes to get the issues resolved; in other words, you may have agreed on many things, and have only wages, textbook review and lunch hours as items remaining. Ultimately they make a decision, send it to the parties, and it's publicized. It's a recommendation, but it is somewhat stronger than a recommendation because they assign a board member or principal to draw up the necessary papers to implement it. Basically, it is still a recommendation, and it stays as a recommendation for the adoption by either party or both. Someone mentioned that the governor even writes you a letter. This is the final step then. If you hit the fact-finding procedure, hopefully, you will agree on the basis of the recommendations; sometimes you don't, sometimes you do. This at least serves as the basis in which you can trade horses to get some kind of agreement. If you don't, you're right back where you started. You have a disagreement. So, what steps either party will take, I don't know. They walk out in some states, they sit down in some cities, they sanction you in some states and localities; then the lid's off again. But machinery has been established along the way to hopefully settle this thing before it gets to that point. But there is no binding arbitration, no binding recommendation. Although it's interesting in Minnesota, it's one of the few states that has compulsory arbitration--and that is in the field of the hospitals. We have compulsory arbitration; we don't obviously have it in the field of public employment. I believe New York is the only other state in the United States that has a form of compulsory arbitration.

Let me review, then, for you the procedures or areas under Minnesota Law. You start with the request for recognition; you may voluntarily recognize a labor organization or not. If you don't, we more than likely will be in the picture. We will determine the appropriate unit following a hearing. We will then determine, with the parties again, an eligible list of voters. Obviously, this becomes a problem when you get into Minneapolis and St. Paul--some of your big metropolitan areas--3,000 teachers. What's your eligible date? In other words, all those teachers hired as of October 1. If you were hired after that, you don't vote.

Following the election, you receive either a positive certification or a negative certification. If you're positively certified, then, gentlemen, you prepare. I guess this afternoon and Friday you will get evidence of manners and techniques and ways for negotiations. Following face-to-face negotiations, if this turns into a problem, you have the right or the use of conciliation. You may go into the fact-finding procedure, and hopefully it's settled by fact-finding procedure. If it is not, then you're up in the air again, right back where you started. Fortunately, we have had not too many problems in Minnesota but who knows what the future will bring.

CHAPTER IV

# THE ROLE OF MANAGEMENT IN NEGOTIATIONS --PRINCIPLES AND PREPARATION

CYRUS SMYTHE
University of Minnesota

As far as the role of management in employee-management relations is concerned, there are several roles that they must play. One, they have the responsibility of representing the interests that they are primarily responsible for, whether it's in the private sector of the economy or the public sector. They are involved in an organization which has certain goals--that is, of producing a product or providing a service. They have the responsibility of providing this product or service under certain conditions. They have the responsibility of meeting certain costs or other considerations in the provision of the service. So their primary responsibility is to the organization to make sure that the goals of the organization are met; they are literally managers of that organization. Now when it comes to employee groups--this, then, becomes just another problem which they must deal with relative to the goals and the objectives of that organization, and it's a problem that needs to be dealt with on the same basis that they deal with any other set of problems. It needs to be dealt with on an analytical, logical, and unemotional basis, just as they would approach any other problem in any other area of the organization. One of the biggest problems in employee-management relations is that managers too often approach problems outside of union-management relations on an objective and analytical basis, but they let their emotions get in their way when it comes to the subject of union-management relations. They act in a fashion which is not consistent with their general approach in the other problem areas.

One problem that you face is that you have been used to dealing with an employee group on an individual basis, and now you are faced with a change in this status in the sense that the employees want to deal with you on an organized basis. There is an initial emotional reaction that such organization is a threat, and an undesirable intrusion upon the practice of running that organization. That's a perfectly understandable human reaction, and I think that most managers would be unusual if they did not have it. But this reaction must be something that you put in the back of your mind, and come back to the problem on an unemotional and rational basis. You have the law in this state, and private sectors have the law, which establishes a certain framework of legal activities for you to undertake relative to such employee organizations. The law in this state is certainly not clear at the present time, but within a year the law will be clear because the Supreme Court will have made a ruling one way or the other.

Now there are two possible reactions of management when an employee group forms. One is to make every effort to prevent such a formation, and there are a number of activities which you can take. Most of these are illegal. In other words, the typical reaction in management when they hear that an

employee group is forming, is to discriminate against those employees who are active in the union or who are members of the union. This still happens today in the private and public sectors. Basically, the law leans against this, and however the law is interpreted, it will continue to lean against it.

Another possible reaction is to favor one employee group or another, feeling that "Well, if I'm going to have an employee group, I'd just as soon have this one or that one." And in essence, this is discrimination on the basis of membership in one group or another. There's no question that if management does make maneuvers in this area there is a chance that they will be successful. Many managements in the private sector of the economy have been able to get one union rather than another to represent the employees. This is also illegal; but again it doesn't mean that it is not a possible reaction, and it won't sometimes meet with success. It also, however, can backfire. Let's assume that you want Group A rather than Group B, and, therefore, you undertake certain strategies and tactics to make sure that Group A receives enough more favorable treatment. If the employees perceive that you are definitely favoring Group A, and Group B is smart enough to capitalize on this, saying in essence the only reason you're favoring Group A is that they're going to be a patsy group, and that they're not going to really fight or keep your interests, you could end up with a reaction against you which would definitely force in Group B. This has happened many times in the private sector. So there are risks involved, and potential gains to be involved if you want to play this kind of game.

Either reaction, trying to keep out the employee organization or trying to get one rather than the other, is illegal, because the law provides in both the private sector and the public that the employer must be neutral. I would make the recommendation that you observe the law in this area. But I would be very aware of what is happening. I would make sure that you know what is allowed to you from a legal standpoint. I would make sure that you follow the progress with the view of developing definite programs of your own in the event that either the organization is successful or that the organizational attempt is not successful.

Unions don't survive or thrive where there is no real justification for them. They normally spring about because of real, earnest grievances against management practices. So even if an organizational attempt or an election is lost by the employee group, you still have an opportunity to learn and to improve your practices by your experience, and I think that's one of your definite responsibilities. If they are successful, then you have another job. One of these jobs was brought to your attention earlier. That is, you are going to be vitally concerned with the nature of the representation of this group in the sense of what unit is going to be determined as the appropriate bargaining unit. This will to a large extent determine the kinds of problems you have and the kind of relationship which will be established.

So, along with your preparation when you find union activity, develop on your own behalf what you think are the appropriate bargaining units which should be determined should there be success in the organizing efforts.

If you renege on your responsibilities here, you may create a set of problems for yourself that you don't deserve to have, or that you shouldn't have. For instance, suppose that by your not paying too much attention to it you find that you have Union A for your primary people and Union B for your secondary people. You have established a very unfortunate situation for yourself, because Union A is going to try to represent their people and win benefits which are far more significant than Union B can win for theirs, and you have set up competition between the groups from the standpoint of benefits. Each group is going to try to do the job for their bargaining unit which will in essence win over the other bargaining unit into their camp. While unions can be certified, keep in mind that unions can also be decertified. If you create a definite conflict situation of this nature, then you have actually added to your problems of collective bargaining where you had no need to. So you should definitely have some plans underway which fit in with your programs and policies of administering the organization with regard to what is an appropriate unit.

If a union comes in and achieves representation rights or bargaining rights with you, then the next job that you have is to sit down and negotiate with them. Then you have to frame out actually what your strategy and tactics will be pursuant to meeting this obligation to bargaining in good faith, and here we come to one of the nubs of the problems I think that some of you are most interested in. And I'm going to disappoint you, I'm sure, by saying that there is no best approach. There is no best strategy, because collective bargaining in the private or public sector is of such a diverse nature. There are so many different kinds of unions and different kinds of problems, different kinds of management, different educational and cultural levels, that there is no common practice of collective bargaining. Understanding collective bargaining for the building trades does not do anything for you with regard to the ability to understand collective bargaining between the airlines and the pilots or between hospitals and nurses or between the auto workers and the auto industry. They are too dissimilar with regard to personality, history, and culture.

Too many people assume that management's job in preparation for negotiation is strictly one of figuring out what management's position should be. They should come in with a list of their problems that they want to discuss with the union organization. They should develop the appropriate facts and arguments and statistics to support their position. But that's still only half the job. The other half of the job is to know what the union's going to come in and ask for, to know how militant this union is, to know how strong that union is, to know the quality of the leadership of that union, to know the problems that that leader has in running his own union, to know what kind of support he has in that union, and to know how strongly the people in his own union feel about different issues. Only then is he really prepared to sit down and bargain. If this second job is not done, then you are not going to be able to even hope to solve the problems at the collective bargaining table as well as if you did have information from both standpoints.

What you have to keep in mind is that a union is a political organization which comes into being through a political process which is run by politicians.

It's the nature of political organizations to have to show gains, to have to prove to their people that they are doing something for them to justify their membership. This is a necessity.

In addition to this, the union leaders have to justify that within the organization they are the appropriate people to run it, and they cannot afford to come back empty-handed from the standpoint of maintaining their own position within that organization. A management which realizes this can oftentimes give the union leaders something to come back to their members with. But the management which attempts to give the union nothing, undercuts the leaders, belittles them, treats them as something less than themselves--this management is multiplying the problems that it has to face, and it is creating problems where perhaps no problems need be.

So if the union comes in, what I am saying is that you ought to accept life under these circumstances. Accept the fact that you now have an employee group dealing as a group, and deal with them. Learn about them and deal with them on an equal basis through their representatives. Do not try to undercut them.

Now if you have an impasse despite the fact that you have dealt, in your opinion, honestly and fairly with the union organization, then you have reached another crossroads. You can either work with the organization to try and develop or utilize some kind of machinery so that you can resolve your differences without open warfare, meaning a strike or lockout, or you can force the issue into an economic struggle.

Now I don't think that I really need to add my comments to the ones that have been made throughout history that a strike is a useless and wasteful thing. I think it goes without saying that it is. So a strike is to be avoided and, therefore, any practices or procedures or attitudes that you adopt which would cause a strike are to be avoided. What you want to do is to try and find some positive method to avoid a strike. Therefore, in your practices, whether they are required by law or not, you should want to bring in some kind of third party participation.

To utilize these procedures to their fullest extent to help you reach an accommodation, I mean to use conciliation. If this fails, I should also think that as reasonable people, which most well-educated people in school management are, and well-educated people that comprise the union in this case, that you would want to go and get some kind of objective third party opinion on a fact-finding and recommendation basis. Because if you have been unable to resolve the thing as intelligent people on both sides of the table, if you've been unable to persuade each other on an intellectual level, and there is still a reluctance to use the economic weapon which is going to do neither of you any good, then the only alternative you really have is to go outside and try to find some objective people who have some knowledge with regard to the issues and with regard to conflict settlement, and get their opinion and pay attention to it.

So that, in brief, is the role of management in preparing for collective bargaining, preparing for unionization, and then preparing for the actual

negotiation process. With regard to specific strategies and tactics, these vary too much from situation to situation. There are no universal strategies and tactics. So I have nothing in this area to offer you, unless you want to give me a particular situation.

I would go along with the value judgment that there be only one kind of representation on the part of the employee, that is, exclusive. I say this because of two reasons. One, it is far easier for the employees to be represented if there is only one representative, and this representative is the spokesman. It's cleaner from the employees' standpoint. It creates less problems and less dissention within the employee group if they look to one spokesman. Sure, they're going to fight about what the spokesman's going to say, and there's going to be a lot of dissention at the union meetings before contract negotiations when the spokesman says "What do you want me to get for you this time?" There will be in any group, but it's far less than if you have two or three groups, all represented or trying to represent the employees. What the 1965 act does is provide for an area of competition where you definitely don't want any.

Now from the employer's standpoint, it is far, far better to have one group with which you can deal and make a binding contract, so that you have something, and you know what you have, rather than to be dealing with two or three groups, all claiming to represent different viewpoints that are in competition with each other and feel that they must all outdo each other in winning something from you. They become vitally concerned with who's going to win between Groups A, B, C, or D. So maybe they might agree that this is what they should do from the standpoint of what's good for their members, what's good for the school, and what's good for the pupils, but that washes out when they figure "We've got a dispute with another union and we've got to do better than that in order to beat them." This is unhealthy competition for the educational system to have. So that's why I would never write a law which provided for this type of competition, and that's the kind of law that was written in 1965.

It's also the kind of law that was written under the executive order of President Kennedy in 1962. Since I'm a consultant to several government agencies, I can speak with real experience. This kind of competition with three kinds of representation--formal, informal, and exclusive--they wish they didn't have. They would very much like to have exclusive and let it go at that. Without doubt, you have some problems when you have exclusive representation in the sense that some minority groups within the union are going to feel that their interests are not being truly or adequately represented. Because of this problem, the courts have developed a duty of fair representation on the part of employee groups, saying that concomitant to the ability to be an exclusive representative is the duty to represent fairly and without discrimination all members of the bargaining unit--union member and non-union member alike. This is enforcible. Unions may be sued for unfair representation either by individuals or minority groups within the employee organization, and the individuals may recover if the court decides that they were, in fact, unfairly represented by the exclusive representative. There is a long case history in this area. Plus the fact that it's part of our

democratic system that the minority, in essence, has to go along with the majority in so many areas of our social and political and economic life that I think the principle of exclusive representation is well established and founded.

CHAPTER V

# MANAGEMENT IN NEGOTIATIONS

GARY MORSE

Industrial Relations Department - Honeywell

First, we'll touch briefly on my bias. I am a part of the collective bargaining process in private industry, and I am a management spokesman, which means that I have all the intellectual and the emotional biases that are likely to be generated in a protagonist who has been engaged in this power process over a long period of time. The second point which should be clear, so that you can judge accurately what the meanings and implications of my opinions may be, is my definition of collective bargaining. I define collective bargaining as an intergroup power relationship that is collective and is bargaining. These two characteristics of the process are very distasteful to professional personnel.

First, the collective element of collective bargaining creates very serious problems because it submerges the individual and focuses upon the group. As a practical matter of representing diversity, some accommodation of the differences among the members of the group, not only as to work assignments, to benefits and privileges, but to job performance, is absolutely essential. It has not proven practical in private industry to be both collective and individual at the same time, and in the collective bargaining process, the collective elements steadily win.

The bargaining element of collective bargaining is, if possible, even more distasteful to the professional because by education and by practice he has looked at himself and his personal performance of his duties in terms of the facts, in terms of an objective, in terms of a professional point of view. These are not possible in bargaining, because bargaining is exactly what the word means to you when you have your first reaction to it. It's the haggling process. It's the way that goods are sold in many countries still. It's the old Yankee horse trader's method. This is probably the reason that I like it so well, but bargaining does present a serious problem to the professional. The tendency on his part to want to break a problem down into its meaningful pieces, to gather the facts or whatever information and related data are available to him, to evaluate and then weigh the data, to hypothesize various ways of then meeting the problem presented, to very carefully determine from among those several possible solutions the right solution and then, having disposed of that to the best of his ability, go on to the next item, is so deeply ingrained as a matter of education and daily behavior in his work, that when he comes to the bargaining table, it is truly an intellectual and emotional difficulty that he faces in turning that aside and engaging realistically in the bargaining process. Here one thing is traded against another and it is where the obvious or subtle behind-the-scenes power effects of the arguments outweigh the facts and the objective evaluations. So much for my definition.

Now let me touch briefly on the process of collective bargaining. In my presentation, I'll limit my consideration to two groups and two only--

professional engineers and nurses, both in Minnesota.

My appraisal and involvement in the engineering collective bargaining experience is this: For ten years in Honeywell, a major group of professional personnel, the engineers and scientists employed in the Twin Cities, tried to relate themselves to our company on a collective bargaining basis. Prior to that time they had had an individual relationship as employees of Honeywell. After the ten-year period, they went back to an individual relationship and have continued in that individual relationship since. So I'm talking about 1947 to 1957, during which about 2,000 professional appliance and engineering employees dealt with us in the collective bargaining situation. How did it work? Almost like a roadmap of the daily press with regard to the teachers' experience today. The engineers observed that the collective bargaining process appeared to have given very great gains to production and maintenance employees, in industry in general, and in Honeywell in particular and Local 1145 under Bob Wishart's leadership here in the Twin Cities area. If it has worked so well, why don't we try it? Heaven forbid! We're professional personnel; we think it non-appropriate to use a non-professional device. Well, let's use it as a professional device; let's alter the collective bargaining process so that it meets professional standards and so that in our use of it, it is designed in such fashion that it is characteristic of professional personnel.

The very best Honeywell engineers were in leadership positions in the engineering federation when it began in 1947, and they told themselves, and they told us in management, that this was <u>not</u> a trade union, such as the plumbers, or the carpenters, or the teamsters; this was an engineering "federation" and that it was "professional." Its major characteristics were more similar to those of a professional or technical society than a typical trade union.

Unfortunately, the collective bargaining process doesn't work very well if you try to run it like a technical society exercise. It seems to work best if it's collective and if it's engaged in bargaining. The engineers, the very best that we have in our employment, men who have since gone on to become chief engineers, could not prevent this development. Seeking a result by a device when the result was not attainable because the device had its hands tied behind its back generated pressures in their own minds and particularly in their membership to "Well, look, let's release two, and let's release three," so that in relatively short order, they got themselves to a point where they struck Honeywell in the Twin Cities area.

Now this created terrific intellectual and emotional problems within the engineering-scientist group, because here they had been telling themselves they were not going to be a trade union--they were professional--and yet somehow they had been forced into a position of having to go on strike. The strike lasted three days; they went back to work; it didn't accomplish anything. So the proponents of its being a professional society said, "See? We were wrong; we shouldn't use these tactics; now let's go back

and be professional again." But it was difficult, in fact it was impossible, for them to be professional as characterized this way.

We would sit in negotiations with a group of engineers, and a topic would come up subject to collective bargaining, such as the number of holidays. Now this looks like a fairly unemotional thing. How many holidays are there out of the whole range of possible holidays? How many holidays have enough impact and objectively have enough meaning so that it's worth some serious study, perhaps possibly trading? Still, no, we'd better not trade. So the negotiator, that dirty, hardnose, so-and-so, Gary Morse and his crew, would say, "This is what we'll do." "Well, what about this, and what about that?" "Well, that's all very interesting, but we have a business to run here, and this is what we're willing to do." And there would be discussions: "Well, if those were the circumstances, it might be that way, but those aren't the circumstances, so this is all we're going to do." And, finally, after several caucuses when they commiserated with one another as to how unreasonable we were, not really willing to spend a lot of time on the several hypotheses that had been suggested, but cutting through and saying, "Well, look, we've got 52 demands from your organization; let's put this one to bed. Is this a key issue with you? Is this serious enough with you so that it displaces the other?" "Wait a minute--you can't do that--you can't compare this item to the other item."

The sad part of it is after having decided one way or another, "No, it's not settled--this is still on the table," or "Yes, it is settled; this is all the company's going to do," and "Well, maybe it isn't one of our most important demands this year, so let's see what you've got on the other items." At the next meeting we would have,every member of the committee would want to introduce additional data. He had read something, someone had made a comment to him, a segment of the membership had complained about the way something was handled. When we said, "Look, that was put to bed last time, whether it was yes or no." ..."Well, you can't do this; this isn't the professional approach--you mean you're going to turn your back on new information?"

It was difficult for professional people to accept this process. Worse still, the gradual shift of power was steadily toward the less competent and the sub-professional personnel in the group. So about three-quarters of the way through, after we had been dealing collectively with this group, where the people who had unusual capability at the profession were located, membership dropped way down, almost to the vanishing point. Membership continued high in the simpler forms of engineering, the less technically demanding forms--production engineering, method engineering, and so on. Our group had some sub-professionals in it--technicians and two-year technical school graduates. They gradually began to emerge as the stewards and the officers until the engineers, so dissatisfied with the results they were getting out of collective bargaining said, "Maybe we're kidding ourselves; maybe this won't work as an individual item; if collective bargaining draws a major portion of its power from collective action, let's join hands with engineering unions in other companies and in other parts of the country."

So the Engineers and Scientists of America was formed; they didn't call themselves a union either. The impetus for this came largely out of the Honeywell

group, and the president of the Honeywell local was elected to be the president of this new national organization. So the professionals employed by Honeywell in the Twin Cities area were faced with electing a new president. They did it perfectly if they had been running a technical society, or if this had been a professional organization of some kind or another.

It's very interesting to see how it actually turned out. They wrote a job description; they established criteria for the job; they then established criteria for the man who would be most likely to be able to deliver on the elements of the job; they screened candidates; they did a whale of a lot of work; they did it very well--objectively, dispassionately, professionally. They came up with five candidates. Election night when the membership was assembled to vote on which of these five would be the president of their organization, a man from the floor said he would like to introduce a new nominee. The chairman of the meeting said, "Well, I think you're out of order; this has all been done very scientifically." "You mean you won't listen to additional information?"

So a business agent for one of the Teamsters Union locals said, "Look, you guys are kidding yourselves; you're not going to get anywhere doing it this way. I'm experienced at collective bargaining. You don't like it, you don't like the collective nature of it, you particularly don't like the haggling--elect me, I'll do it for you and I'll get you what you want." So he was their president. Now you laugh at this, but if you would follow the experience of teachers as now reported around the country, there is considerable of this misunderstanding of the collective bargaining process and of what they themselves are likely to find that they can do once they become immersed in this method of relating themselves to a school board or a school system.

Let's go to the nurses. Now, one of the advantages of dealing with the engineers that made it possible for us to enter into contracts with them and to let them learn and let us learn over the ten years what this experience was like, was the fact that there was no barrier to their going on strike. When it finally came down to it, we said, "This is our final offer; this is all you're going to get; we don't care how much it hurts you. We're unwilling to listen or to run over the racetrack another round. This is the end. Now you either take this, or you go on strike!"

Except twice, they always decided to take it rather than to go on strike. Collective bargaining is the exercise of a power mechanism; it is not an intellectual exercise. It is not a mathematical exercise. It's not a logical exercise. It's a power exercise. The nurses in Minnesota bargain collectively with the hospitals, and I'm calling nurses professional employees. They think they're professionals, and talk a great deal of their professional status and all the other trappings of what that R.N. stands for. In our state, the Public Hospital Act prohibits a strike on the part of the employees and substitutes compulsory arbitration.

I told you when I began that I was biased; my emotions show through when I get into some of these areas. Compulsory arbitration pretty effectively

kills collective bargaining. Let me give an example: In the hospitals in Minnesota in 1966 (although this was not nurses in this case), a contract was settled by compulsory arbitration three years after the deadline. The reward was retroactive three years. Now if you think that presents a problem to a hospital in what it charges a patient, think of what this would do to a school board. You may say, "Well, three years--why does it take three years?" Because collective bargaining is a power process, and when the hospital employees and the hospitals reach an impasse in their bargaining and there's no right to strike, nobody is confronted with the fact that "we're out of operation." The pressure to do something about it is not very great. We'll get the state mediator in here; maybe he'll help us more than he will the other side. Well, it doesn't work. We can't mediate. Finally we go to the governor, and we say, "We've reached an impasse; appoint an arbitrator." This is the theory that we can get more out of the arbitrator than we can across the table with these antagonists. Both sides feel this way.

So the governor appoints an arbitrator, and he never appoints an arbitrator the second time. They get sick or go to Europe, or they do something else--they're busy. Why? Because an arbitrator who has to decide something for the nurses relative to the hospitals, is going to be in exactly the same position as an arbitrator that's going to have to decide something between the teachers and the school board. There is no way to get an acceptable answer that doesn't hurt a third party. Now in the hospitals it's the patient, and in the schools it's the taxpayer.

Now it's even more complex than that because here is a union--the nurses--making a terrific demand across the bargaining table. Just the kind of demand where you say to them, "Look, we're not going to do it; now you can walk the streets until your kids starve, but you can't change what we're willing to pay." Then they have to face up to it. "Well, shucks, we didn't really mean it; we just had to have it big enough so that we wouldn't lose anything that was attainable. Now let's inch down a little." And so the deadlines and the pressures--the power elements that go with the rest of this power process are pretty important to its effective operation.

But when you're in the arbitration room--compulsory arbitration--the effect of some of these powers is lost on the participants. So they get exerted on hope. "Look, our people, the nurses, haven't fared as well as they ought to. Frank Sinatra's and Julie London's get a lot more than nurses; now isn't a nurse better than an entertainer?" (You've heard the same argument made by the teachers.) "These nurses are being abused by the hospitals. This is 1966. We're supposed to be an enlightened nation--now come on, Mr. Arbitrator, be reasonable."

One trouble that the problem poses for the arbitrator is that 17 other unions collar him when they have an opportunity and say, "Look, don't give those hospital employees too much money, because we have negotiated benefit plans with our employers. If those rates go up, our negotiated benefit is only going to cover 15% instead of 20%--so whatever you do, don't!"

Now this sounds funny, but these are the realities of the collective bargaining process; somebody has to give. Collective bargaining works well where it

works. Now when you do it some other way, and you make someone else give--the arbitrator, or through him the patient or the public, it doesn't work so well.

Let me just wrap it up by saying, if this process is so horrible, how do I dare come in here and say that this is what I work at? The collective bargaining process is a good process if it's understood. It's good if it's applied in an environment in which the natural constraints of its extreme power serve to keep it reasonable in its results.

Now the American public is not quite sure that the constraints of the environment do contain it as effectively as it should. When Arthur Goldberg decides that a strike at the Metropolitan Opera in New York constitutes a national emergency, the public begins to wonder, "What are the rules to this game?" When the airline machanics shut down five airlines, and the federal government tosses its anti-inflation guidelines in the ashcan, the public begins to wonder, "Well, gee whiz,...." Now, why does such a powerful device survive? It's not contrary to our tradition. We have had running way back to medieval times two ways of settling our differences. One way is to say, "Let's you and I sit down and reason together." The other way is, "Look buddy, put up or shut up. Step outside a minute, will ya?" Now, this is the collective bargaining process. You may say, "Oh, well, Gary, you're stretching it." Way back in our common law, we had two choices, and if you and I had lived in Medieval England, we could have said, "I want this dispute with my neighbor settled by a jury of our peers." This was the beginning of our system of the courts and we were then bound by that result. The other way was trial by combat, a perfectly legitimate way. You strapped on your armour; I strapped on my armour; we each picked our best lance; we got out for the joust. By golly, the right won.

Now this is exactly what the teacher is asking to do. This is exactly what the maintenance and the production employee does. Now in the production and maintenance menu, it works. I say, as a management representative, if I have goodies to offer employees, I would prefer to operate without a union. More flexibility, more chance to take advantage of the variation in individual capabilities and so on. But if I have a tough row to hoe, if I'm going to have to say repeatedly, "No!" to a group of employees, I'd much rather deal with a union. The power is there to say no to that membership when you bargain collectively.

Gary Morse took a dollar an hour pay away from 20% of Honeywell employees in one factory only three years ago. Do you think that would have been possible on an individual-employee relationship? Twenty per cent of those employees would have quit. Fortunately, we had a union. We took a dollar away, they groused. They said, "We'll never elect you guys again." They didn't. It worked because it's a power device.

In summation, I don't want you to interpret my remarks to mean that there is any hope of avoiding collective bargaining with the teachers in Minnesota. There's no hope. My purpose is to alert you to the fact that you're

now going to be in a collective bargaining situation. There's no way you can avoid that. This is a very sticky substance. It's worse than fly paper. You touch it and you can't let go. The teachers in Minnesota cannot let go of the collective bargaining process now they've got their hands this much embedded in the sticky surface. Therefore, those of you who are superintendents or representing school boards or management, should be reacting to my remarks in terms of, "I'd better do my homework; I'd better figure out what the elements of this process are, where the solid ground is, and where the quicksand is; I'd better get somebody in my organization or hire a consultant who can guide me soundly through the early stages of this experience."

So my purpose really is to have you look forward now and say, "What do I do in my school? If I'm a teacher, how is this going to affect me? If I'm a superintendent, how is this going to affect me? If I'm a member of the school board, what is this going to mean? Think it through, coldly enough, objectively enough, so that you say this we do, this we don't do. I believe that we have to go through this experience.

CHAPTER VI

# THE EMERGENT ROLE OF TEACHERS

## PART I

**ARNOLD WOLPERT**
National Education Association

I have both a confession and a request to make. The confession is that I really stand up here somewhat inadequately as a representative of the process of negotiation, because I've just discovered that I failed entirely to negotiate my honorarium before I spoke, and I guess the only thing to do now is to place myself upon the mercy of the group and let you do the negotiating for me, depending on what happens tonight. The request that I would make is, please don't hold me accountable for anything or everything that comes from California. I very much enjoyed the many years of service that I gave to teachers and to education there, but I do have to confess that whatever it is, good, bad, or indifferent, if it exists anywhere in the world, they've got some of it in California.

The subject tonight is the emergent role of teachers and teacher organizations. I think it's a very significant subject and a very timely matter for us to consider. The first thing I want to point out is what teachers are, how they came to be that way, what they want, and how they aim to get it.

Teachers of today are a different group than many of us conceive. There are about 2,000,000 of them in the United States--actually 1,809,000 classroom teachers--but in excess of 2,000,000 people, professionally trained, working in the employ of the public school systems of the United States. Yet there is no average teacher. But there are some statistics which help give a pretty clear picture of this person who is the public school teacher of the United States in 1966. Two out of three of these 2,000,000 people are women. About seven out of eight elementary teachers are women, but actually 55 out of 100 secondary teachers are men. Men outnumber women in the secondary field. Eighty-nine out of a hundred hold a Bachelor's degree. Thirty-three out of 100 own two college degrees, and today's typical teacher has completed four and seven-tenths years of college work. In other words, he's better than two-thirds of the way toward a Master's degree, in terms of preparation.

Seventy per cent of all of today's teachers are married; 80% of the men and about 65.5% of the women. Well over half of them are the heads of their respective households, be they man or woman. The typical man teacher has three dependents, that is a wife and two children, in addition to himself; the typical woman teacher has 1.1 dependents. The average age of today's teacher is 40 years--the man is just under 36, and the woman is just under 42. Actually, when you look at it this way, you find that rather than having an average teacher, there are really two significant sub-groups within the toal teaching population. The men, who constitute about a third, and the women, who are roughly seven to ten years older in the larger group. Most women in education tend to take the period of the 30's, that is between age 30 and 40 out to make a home and to raise

a family. The large group of women teachers in the United States today tend to concentrate themselves into the 40-year and older age age-group, many of whom have sole financial responsibility for their household.

Better than half of all the teachers in the United States have taught for ten or more years, and yet one-third of them have taught fewer than three. The typical man teacher is now in his seventh year of service or experience. The typical woman teacher has passed the eleventh year of service. The salary that the typical teacher today throughout the United States is earning for a year's contract is $6,735. Now for this contract an elementary teacher is working an average of 48 hours and 30 minutes a week for 40 weeks. This comes out almost exactly to the same amount that the person would be working if he worked every single week of the year at 40 hours a week. The typical secondary teacher is putting in 45 hours and 54 minutes or almost 46 hours a week, and is actually putting, in terms of the number of hours per calendar year, a full-time employment into activities directly related to teaching and to that teaching assignment. In addition, almost one out of three teachers each year undertake some direct self-improvement activity of consequence. A lot of teachers also undertake special or supplemental employment in the summer. The last figures I have on that are in 1962, and I would guess that with the additional federally-supported educational programs, these figures are now considerably larger. In 1962, 60 per cent of the men and 12 per cent of the women teachers undertook additional supplemental employment during the summer.

Now this is kind of a breakdown or picture of the teacher of today. By and large he is a highly competent, well-educated, hard-working, constantly improving person. He is a person who has chosen teaching, if he's a man, because he wants to, and if a woman, partly because she had to come back into the employment world and found teaching to be a satisfactory and rewarding occupation. But he or she is a person who under today's standards of economy and affluence is probably as underpaid as any employee in the entire gamut of occupational endeavor in the United States.

Now let's take another look at teachers. Teachers today didn't just happen; they have developed and emerged under a constantly developing pattern. You've heard and seen the caricatures of teachers from the "old maids" through the "Ichabod Cranes" through the "absent-minded professor" and all of the other canards that have been fastened upon us. But let me show you the kind of constant commitment and effort which teachers have made throughout the American stage of development. If there's one thread that holds true, it's been that the teachers in the United States have sought professional stature. They've never really gotten it. On the other hand, they've never really given up hope. The background and the aspiration of America's teachers is for professional status. They keep trying to get to where they believe they ought to be and to where they believe education deserves them to be. Long ago they realized that they wouldn't make it by themselves and that they had to band together some way or another to make it.

About 150 years ago there began to emerge state organizations of teachers. Actually, the first known teacher organization of which we have any record predates the Declaration of Independence. It was kind of a mutual aid society

of teachers in New York City. That forerunner of local associations has long since, of course, been superseded by many organizations, but the idea of teachers joining together to meet their own needs and to advance their common cause is not a new or a novel one. The big area of growth in creating this kind of an organizational structure was during the middle 1800's when most of the state educational associations and the national education association were created. Local associations actually didn't come into being generally until after the 1900's, and the real period of development and growth for local education associations or teacher associations really began about the year 1940.

Admittedly, the first organizers tended to be the big national leaders of education at the time, the Horace Mann's and the Henry Bernard's and the other state superintendents. Their leadership was soon challenged and taken over by college presidents, and for about a 20-year period, college presidents tended to run the education associations in the United States. That soon was challenged by other professorial ranks of education and the outstanding college professors began to run the national and state education associations. With the turn of the century, the leadership of the colleges was challenged by the public school people, and generally superintendents of schools ran the education associations, not only in terms of stated leadership, but in terms of actually deciding what they were going to do. Along about 1920, the leadership and the dominance of superintendents began to be challenged successfully by principals and supervisors. Beginning about 1940, the classroom teacher challenged the administrative leadership, and today by and large the education associations are attributable to and led by classroom teachers. It's a natural and normal evolution that those who had the most to give and the most to receive from the activities of the organizations began to take them over.

The organizations did not just reflect their leadership or those who ran them, but they also reflected concerns. Now these are simplifications but the big progress that's been made in terms of establishing academic freedom, tenure, retirement, salary schedules, certification, ethics, and standards of performance have come as a result of teachers themselves making the effort. During the 1890's, for example, the National Education Association really began to strike home on this business of academic freedom. Now we've left some stones unturned in this realm, but creating the concept and getting it generally accepted came as a result of the activities of the teachers themselves.

During the 1900's, tenure became the dominant matter of concern. During the 1910's, we saw the establishment of the retirement systems. During the 1920's, standards of certification tended to be the dominant theme. The adoption of the single salary schedule seemed to be the dominant development of the 1930's. During the 1940's, protecting the political freedom of teachers from encroachments and restrictions was the dominant theme. In the 1950's, the cooperative development of personnel policies really zeroed in on some of the problems of employment, evaluation, promotion, dismissal, leaves, and other matters that were important to teachers.

During the 1960's, the dominant area of tension of teacher associations has frankly been professional negotiations--to bring into greater balance the degree of influence which teachers, administrations and boards bear on these matters of common concern. It's been a logical kind of development, through which teachers have constantly sought to make tomorrow a better day than they had yesterday and have been less than satisfied with what they have today, but have kept working in a cooperative, reasonable, effective way to make education and teaching a better service and a better life for them. Now actually they've done the four things which any professional society does: (1) to set standards of admission or standards of preparation to the service, (2) to set and enforce standards of performance, (3) to improve the quality of service in the field of knowledge which that profession commands; and (4) to influence public policy or to improve the conditions under which that service is purveyed.

Now we've worked pretty darn hard on this business of improving the quality of the service, and sometimes we've let the business of improving the conditions under which this service is purveyed coast a little too much, and this is what has happened during the years of fantastic economic development following World War II. Frankly, the teacher organizations have been just a litle bit out of step with the attitude of teachers. What has now happened is that teachers have come back and said "Shape up!" So you find today that there is a different NEA than there was four or five years ago. It's an NEA that is far more aggressive in terms of fighting for conditions under which teachers teach.

One of the procedures that has been developed is this procedure of professional negotiation. Very frankly, what it is is simply an adaptation of the concept of collective bargaining to a governmentally-operated, tax-financed professional service to people. We take all the elements that are appropriate and good from collective bargaining and attempt to apply them and adapt them to this governmental service. In doing so, we have sometimes been able to call our own tune. In some instances, state legislatures have put us into a legal process or straight-jacket which has not been exactly of our own choosing. Today there are 11 states in which some kind of a professional negotiations law exists. Some of these have been those which our own people have developed. In other instances, they have been laws which have been developed in other realms of interest and have been enacted by legislatures, and we have had to live with them. In every instance, we have found that we can work with them, and that even though there might be aspects that are distasteful, they have produced results.

We're actually going through a period breakthrough like a teen-ager getting some independence, in which there are some excesses perpetrated. Really, what is shaping up as the emerging role of teachers is one of having the prerogative of a legitimate profession, of saying, "These are the decisions that we are qualified to make because we're the experts in education." Boards will make the decisions which they must make because they are representatives of the public to set the stage and to create the vehicle through which our service is best given. Now this is the emerging role of teachers, and we aim to help them get it through the NEA and through independent professional associations.

CHAPTER VI

## PART II

DAVID SELDEN
American Federation of Teachers

The emerging role of the teacher--does that word "role" grate on you the way it does on me? I would say the emerging function, status, position of the teacher, rather than the role. The teachers are not acting a part, the teachers are performing a service and a function in trying to achieve a status in the school system and in society in general.

What started this organizing of teachers? It has come upon us very quickly. There are books on this, and there will probably be another 50 books on how this happened to occur at this particular juncture in the years to come, but I think it's worth noting that ten years ago, collective bargaining was considered something for blue collar workers. Teachers didn't know much about it, even so far as blue collar workers were concerned. But today, collective bargaining for teachers is a household word. It's the coming thing, and there are a number of states which have enacted laws relating to collective bargaining. Some of these laws are very bad laws, and really do more to restrict collective bargaining than they do to advance it. But there are some, like the Wisconsin law, and the Michigan, Massachusetts, Connecticut and Rhode Island laws which are genuine collective bargaining laws and which extend bargaining to teachers. These are the same rights which workers in private industry have enjoyed ever since the passage of the Wagner Act in 1937.

Now I was bothered by some of the remarks that were made during the presentation this afternoon and this morning. I don't think I've ever heard a more cynical presentation than I heard this afternoon, even though I laughed along with it the way you did. If that's what collective bargaining's all about, I've been doing something else. Granted that some of these things do apply, some of this selfishness and lack of regard for public results, granted that some of this does apply on both sides of the bargaining table, even in teacher bargaining. Still, in my experience, teacher collective bargaining is a good deal above the level of the talk we heard this afternoon.* Maybe the collective bargaining process in education could deteriorate into something of this kind; I hope not. Sometimes, when you get into a clutch situation, I suppose you do things that you ordinarily wouldn't do, but I don't think so, and it hasn't been that way up to the present time.

So far as the AFT is concerned in collective bargaining, we have really three-fold objectives; one,of course,is the bread-and-butter sort of thing that any union does: improve salaries, working conditions, and fringe benefits. This is a normal sphere of collective bargaining. Almost anyone on the management side, whether it's in the educational

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*Refers to "Management in Negotiations" page 29.

enterprise or private enterprise would grant that this is a normal and legitimate function of a union.

Beyond that, because we are a very special sort of organization made up of professionals, we have a second series of objectives which we try to obtain in collective bargaining. These go into the area of educational policy. Teachers do want in. They want to share educational policy-making, and they can't do it as individuals. They can only do it collectively through their organizations. The difference is sort of like this: An auto worker is not a professional. An auto worker is a production worker; he does a repetitive, uninteresting job for the most part. I was an auto worker for awhile, so I can say that with some authority. It's none of his business whether a car has tail fins or not. It isn't any of his business how the car gets tail fins because he is not a professional. The essence of professionalism is that a person is expected to use his independent skill and judgment in the performance of his work. When you hire a doctor, you want his judgment as to what's wrong with you and what needs to be done to correct the situation. Teachers are professionals in this same sense.

Teachers have been restricted in the exercise of their professional judgment, but teachers now are demanding this sort of professional status. It would be utterly impractical, except in the realm of the classroom, for individual teachers to use their independent skill and judgment, although there are many judgments that a teacher must make as an individual. But it would be utterly impractical to do this on an individual basis affecting school-wide policies. So this must be a part of the collective bargaining process; it flows out of the nature of the work. Finally, the AFT does have commitment to broader social objectives. We are an organization that is not just a bread-and-butter organization, not just an educational organization, but an organization which is committed to social progress. In our bargaining, although it doesn't enter into contracts very often, most of our people have these objectives in mind.

Let me say something a little bit about the nature of the AFT. Our structure is different from that of the associations. You can't join the AFT. You join the local organization. We don't take members-at-large, but mostly, we only deal in local organizations. From the very outset, our organization is structured for the bargaining process, because it is the local district which is the employer. If we can't organize a viable unit in a district, then we feel there's not much point in forming an organization. This restricts our membership, of course. Our membership nationwide is now 130,000, something like a tenth of the size of the NEA and its various affiliated--sometimes I use a nasty word here--satellite organizations.

Still, when you consider the nature of the organization and where its membership is, the 130,000 figure is apt to be misleading. For example, we have very few members south of the Mason-Dixon line, because we don't permit segregated organizations. We have some in Louisiana, integrated organizations, but most of our membership is all north of the Ohio River. We are governed also by elected officers; the chief of the AFT is thealected president. He is elected for a two-year term and is not elected on a rotating

basis. He stays president as long as he cares to run and can get re-elected. There's a lively contest at each AFT convention; it's not a predetermined thing. With the structure of the organization as it is, we are geared to the collective bargaining process. Five years ago we had maybe ten collective bargaining contracts in the whole country; we have about a hundred now. I don't know how many the associations had five years ago. They may have had two. They now have many more than we have because they represent many more teachers and are organized in many more districts. But as rapidly as we can, we are encouraging our local unions to go into collective bargaining.

I think it is unfortunate that you don't have a state law covering teachers in this state at the present time. I think the process would be much more orderly and much more satisfactory. I think the public would benefit from this. In the State of Illinois, where there is no collective bargaining law, we've had a number of strikes, and already, in the past six weeks, we've had four strike deadlines, with settlements on the eve of the strike date, simply over the question of whether or not the board of education would grant a bargaining election. In all of those cases, the boards have agreed to hold elections, and we're going through that process now.

In the State of New York they don't have a collective bargaining law, and yet the New York City collective bargaining election and contracts that have been negotiated there are prototypes for the whole country. An interesting thing about collective bargaining is that it doesn't recede. It doesn't go away, as suggested this afternoon, simply because it's really not appropriate for professionals. This hasn't been the experience. In New York City we've started out first with a bargaining unit of pure classroom teachers and none of the supporting services. At the present time, there have been elections or designations by the New York City Board of Education of units for school secretaries, social workers and psychologists, guidance counselors, laboratory assistants, attendance teachers, night school teachers and summer playground teachers. At the moment, the whole ball of wax is under collective bargaining, all represented by the union, fortunately.

Another problem is multiple negotiations. I don't think it makes too much difference. That's your problem. In New York all these various units, regardless of when they got collective bargaining status, are on contracts with common termination dates. The negotiations are carried on at the same time; you get it all settled all at once.

As to the proposition that teachers do not have the right to strike--well, they may not have the right to strike, but strikes do occur. Let's not use the term strike; let's use the term "work stoppage." People stop work; sometimes they resign, like the nurses or the firemen, or sometimes they just don't show up--take sick leave. Even in states with the most restrictive laws, there are work stoppages. We have come to believe that anti-strike laws are ineffectual and will not restrict our activities and do not do away with the power to strike.

We favor two-year contracts--negotiations every two years coupled with a no-contract, no-work policy. The way it works is this: You're under contract, and you have a no-strike clause in the contract, and there are no strikes during the life of the contract. When the contract expires, usually at the end of the school year, schools don't open up again until there's a new contract negotiated. This is something like a sanction, but we believe in this, and we think you'll be better off under this kind of a situation, too. Legality doesn't have much to do with it. What's the difference whether everybody resigns at once or everybody just doesn't show up at once, or everybody goes on strike? Certainly, you couldn't say it was illegal to resign. We have an amendment to the Constitution outlawing involuntary servitude. You don't have to work if you don't want to.

Finally, I want to talk about the role of the superintendent. I haven't ever seen a superintendent that didn't know which side of the table to sit down at when it came to collective bargaining. The superintendents do represent management; there's nothing disgraceful about this. You really ought to be proud that you do have this exalted position and do the job of representing management interest. I think what's confusing about it is not so much in terms of salaries, working conditions, and fringe benefits--this isn't what leads to the confusion. The superintendent quite naturally is responsible for recommending a budget to the school board. Where it gets confusing is in the role of educational policy. Superintendents emerged only within the last 25 years or so, as educational policy-makers. Before that, educational policy was solely in the hands of the boards of education. Then the superintendent came along, superintendency developed, and the superintendent became what they choose to call an educational leader--responsible, they say, for recommending policy to the board. Recommending policy to most boards of education by the superintendent is tantamount to really enacting it. It's a lay board; they hired this fellow to give his expert opinion, and then he gives it, they feel some obligation of going along with him.

Now what collective bargaining does, is that it introduces another element into the superintendent's life. Not only does he have to come up with policies which please the community and the community's representatives--the board of education--but we expect him to negotiate those policies with the teachers. There is no reason why he shouldn't do this. If teachers are professional, and if they are to share in the decisions which control their professional activities, they certainly have to have a voice in it. Now we're not saying that they should go directly to the board of education and do this. No, negotiate with the superintendent and go through channels. Teachers want to share in educational planning.

You may be wondering why you ever got on the school board or became a superintendent, but that's life in America; and that's progress.

CHAPTER VII

# SCOPE OF NEGOTIATIONS

JAMES KUHN
Columbia University

From talking to some of you, I gather you have been told that collective bargaining is a pretty hard-boiled process; I thought I might relay the kind of bargaining that is not always so hard-boiled, and you'll get a picture of dealing with something a little bit more theatrical perhaps. Back in 1948 when Lewis was still acting very tough toward the coal miners, coal operators, and the negotiations often led to strikes, I heard from an observer the following episode.

John L. Lewis was a great big guy with his huge, shaggy eyebrows,and the men on the other side, the bituminous coal operators, were very much the same--great big, beefy 240-pound guys. When they all walked in, the floor creaked, and when they sat down, the chairs groaned. They lined up on either side of the table. Lewis would always come in in the middle of his group and sit down at the middle of the table, and his lieutenants would spread themselves out on either side. This time Lewis came into the 1948 negotiations with a huge pile of documents which he put on the floor and on the chair next to him. Now they always went through a regular ritual; first, the mine operators would get up and say why they couldn't, wouldn't, and shouldn't give what Lewis was going to demand. Then Lewis would get up and in a long hour-and-a-half speech, tell them why they should, would, and could give what he was going to demand. Then they would adjourn, usually for lunch. Then they'd come back and break up into groups and negotiate and finally agree upon Lewis' terms.

This time, propaganda followed the script. The coal operators explained their situation and why; they didn't know what Lewis was going to demand, but they were sure they couldn't afford it, and took up the time up to about 10:30. Lewis then began his presentation and said he first wanted to lay a few facts on the table before he presented the union's demands. He said he'd brought a little bit of information along with him which he thought they might find worthwhile. He picked up the first document, and it was the price list of goods in the grocery stores in a mining town in Pennsylvania. He began to read it: the price of bread, 12¢; one quart of milk, 15¢; pork and beans, 12¢; and on he went. He finished that store, turned the page, and went through the price list of the next store in the accompanying town in Pennsylvania. He went on and on through all the stores and all the mining towns in Pennsylvania. He put that document down and picked up one for West Virginia. He began reading the price list for those items in the grocery stores, finished West Virginia and went to Kentucky, and to Tennessee and Indiana, and to Ohio. By this time, the big, heavy men were feeling some discomfort in their middle regions, since it was nearly 1:30. One of them, shifting uneasily in his chair, broke in in the middle of Illinois, and said, "Mr. Lewis, we deeply appreciate this information that you are giving us; it's been most enlightening; it's going to be most useful; but, well, we're all a little hungry and I'm sure all of us would like to adjourn for lunch." Lewis stood up and in a big

bellowing voice, said, "Know ye the hunger pains in the bellies of the miners," sat down, and began reading again and finished all his lists before they went to eat.

I've been asked to talk about the scope of negotiations; I suspect this is a highly charged field, since I think it gets into the right to manage. I think the accommodation of the scope of negotiations is going to give us some pretty good clues about the influence of the organization that's going to speak for the teachers. It's going to also affect limits and the breadth of the work and the activities of the administrator, or the other managerial authorities that deal with teachers, and the kind of problems that are going to have to be handled through bilateral negotiations. Now I would guess, from the history of businessmen elsewhere and industrialists and employers throughout history, that they're not going to be happy about a broad scope of negotiations. You probably are unsure what the results will be of any kind of negotiations, and thus, the more limited, the more chance there is that something's going to be preserved; that not every area of work and responsibility with which you are charged is going to be subject to second guessing by someone else. You're apt to say, "I want a very narrow scope of negotiations." Further, I would guess that if there are any such superintendents or school board members who take a rather dim view of collective bargaining in the first place, they're also going to seek a limit on negotiations, simply because this is a way to keep collective bargaining down.

I would argue that to try to limit the scope of collective bargaining is useless. There are some limits to the scope of negotiations, and the reasons I'll get into a little bit later. But to try to set the boundaries is going to be arbitrary and simply unworkable. At least I have seen nothing in the history of negotiations in the United States in the past 100 years that would suggest any chance of growing limits and saying, "collective bargaining will go this far and no further." Attempts to set boundaries misleads both the legal foundations of the employing relationship between employers and employees. What we're faced with is the old situation of where it is easier to describe practice than it is to understand the nature of the principles involved. In practice, collective bargaining's going to be limited; in principle, if you try to argue on the basis of principles, there's no answer whatsoever.

To illustrate and to prove my point, I'd like to go back into history and give you some outlooks that employers and industry have taken over the past 100 years or so. Now the usual employer attitude toward the scope of negotiations, I think, can be very well given by the editor of the Journal of Commerce, written in 1851. This is when unions first began to ask for negotiations. Negotiations over wages only. They never conceived of bargaining over anything broader than that. The editor said, "We shall adopt the rules of the union when we make up our mind to yield to the dictation of a self-constituted power outside our office." The next day, after having faced the union that evening and becoming very unhappy with the results, the editor wrote this: "Who, but a miserable, craven-hearted man would permit himself to be subjected to such rules, extending even unto the number of apprentices he may employ and the manner in which they shall be

bound to him, to the kind of work which shall be performed for him in his offices at particular hours of the day? For ourselves, we do not disagree with these rules, but sooner than be restricted on these points or any other by a self-constituted tribunal outside of the office, we would rather go back to the employment of our boyhood and dig potatoes or pull flax or do anything else that a plain, honest farmer may properly do in his own territory. It is marvelous to us how any employer, having the soul of a man within him, can submit to such degradation."

We all know the history after this; they did submit; they did bargain over apprentices, work rules, wages, hours, and many other things, and it didn't turn out to be so degrading, and there were even some benefits to be derived. I would guess that as employers and managers and administrators learned to submit to the rules, they far exceeded the range of the issues unions then wanted to discuss. They did not find themselves particularly limited; in fact, I would guess perhaps managers today have more control and more flexibility in dealing with their work forces than they had in 1851. The unions have pressed hard, but managers have always been able to open up other areas in which they may exert their authority and influence.

Managers have always been skeptical of the results of increasing the scope of wages, hours, and conditions of work, and nearly 100 years after the editor of the Journal of Commerce expressed himself, the president of General Motors expressed himself very much the same way with the same kind of hyperbole: "If we consider the ultimate result of this tendency to stretch collective bargaining to comprehend any subject that a union leader may desire to bargain, we come out with the union leaders really running the economy of the country....only by defending and restricting collective bargaining to its proper sphere can we hope to save what we have come to know as our American system, and keep it from evolving into an alien form imported from east of the Rhine. Until this is done, the border area between collective bargaining and the unions will be a constant attempt to press the boundary farther and farther into the area of managerial function."

Now he went on, but it was fairly clear that he didn't exactly know what managerial functions were; he certainly didn't define them with any clarity. It seems to me that managers have always felt there's some kind of a managerial preserve into which no one else should move. What this area is, and why it is so important to preserve for managers seems to be a little less clear, and my colleagues at the business schools who teach management have never done very much to enlighten me on the matter.

In 1947, after the war, President Truman called a Labor-Management Conference together to discuss labor problems, to see if they couldn't solve some of the terrible problems that had led to strikes in 1946, which was our worst strike year. Management proposed that the parties agree to limit the scope of collective bargaining. This is, after all, one of the key issues and they proposed a rather long list of exclusions--things that the union should not negotiate on: product, location of plant, plant

layout, method of production, distribution, financial policies, prices, job duties, size of work force, work assignment, production standards, number of shifts, discipline, among a number of other things. What was left, I'm not sure. The union men hardly agreed to it. They denounced it in very strong terms. They said there was no line, no boundary to be drawn between things that could be bargained over and things that could not.

Now it's interesting to note that the two major teachers' organizations take very much the same line and I think for the same reasons. The Education Association rejects the industrial relations concept, delineating working conditions and management prerogatives and insists that the professional interests of the teachers include much more than bread and butter. In fact, the total educational program should be subject to negotiation. A speaker for the American Federation of Teachers said very plainly that "We would place no limit on the scope of negotiation. The items which are subject to the bargaining process are wide open. I look for a great expansion in the effective scope of negotiation; anything having to do with the operation of the school is a matter of professional concern and thus is subject to collective bargaining."

So I don't detect any difference between labor in general and its approach to collective bargaining and that of the associations that are going to be organizing the teachers. In fact I think it is much too late in 1966 to try to draw any boundaries to the scope of collective bargaining. Every item that management has wanted to exclude has usually been negotiated at some time or in some place. The miners, as long ago as 1869, were concerned with the price of coal and negotiated various arrangements to see that the price of coal was maintained at certain kinds of rates, obviously interested in keeping enough flow of funds into the organization so that good wages could be paid. The printing trades have organized foremen since at least 1889, and the building trades have also organized many of the people who would otherwise ordinarily be called managers. The clothing workers, particularly in New York City, have for years helped to set production standards for the industry. The building trades unions have acted as employment agencies for the industry. The hosiery workers have helped determine the investment policies of their firms. The teamsters at the present time have an intimate say in the location of terminals, movement of terminals, transfer of workers, and investment policies of companies.

The National Labor Relations Board and the courts have upheld negotiating in collective bargaining on almost any topic. I'm not aware that they have excluded any except those that are forbidden by law. They have required negotiations on Christmas bonuses, on stock-sharing programs, on the relocation of plants, on safety rules, on work clothing, pensions, profit-sharing, merit rating programs, and sub-contracting. I find it hard to think of anything within the plant, within the management, that is not apt to affect conditons of employment, at least under some certain circumstances.

The courts have wrestled with the problem very carefully and conscientiously, and they've discovered that there just are no standards, no limitations.

I think, also, we ought to recognize that industrial unions and teachers' unions don't go into negotiations just for kicks. They are not trying to expand the scope of negotiations just because they want to have more power or this gives them a pleasant feeling. In fact, oftentimes quite the reverse. Negotiations are a very serious business to which they give a good deal of thought and effort. If they ask to negotiate about a new area or to broaden the scope, it is, I suspect because they feel they have very good and compelling reasons. In fact, they may feel they have no choice in the matter.

Now managers have usually tried to meet the issue of the scope of collective bargaining by insisting on management rights clauses. Some of them have been very broad and all-inclusive, listing a long number of items; others have been very short. I say that the effect of both has been about the same; that is, they have no effect at all.

Consider this kind of case; it came up in New York City recently. The teachers were very exercised about class size. Now this issue was probably more important than salary. The teachers investigated the law very carefully. The state law says that teachers do not have to handle more than 150 students per day, but it doesn't say whether they can have one class of one student and another class of 149, or any other kinds of mixtures. So they investigated, got some data, and discovered that 3/4 of the classes handled by the teachers were over 30 students. Now they felt this was unjust, and they wanted some further clarification by the Board of Education. Superintendent Donovan took the stand that the size of the classes was a matter of educational policy and that he wasn't going to negotiate on it. The teachers insisted that he was going to negotiate on it, since it was a matter of working conditions. Donovan said that to limit the size of classes would restrict experimentation, would lead to inflexible programming, would put restrictions on team-teaching, and would be impossible, in short. Further, he said as a practical matter, there wasn't enough space and there wasn't enough money to have smaller classes. The teachers argued that as professionals they had to have some say about the educational policies. But the obvious matter that became clear as they continued the negotiations was that the class size is both a working condition and a matter of educational policy. The agreement that they worked out had explicit limits of 35 students, but a note that exceptions could be made. When they were made by the superintendent or the principals, the teacher would be given a written explanation, and then the teacher could grieve about the matter, and it would go, ultimately, to some kind of arbitration. It was admitted that the organizing of classes affects the working conditions of the teachers.

Any claim to any absolute unilateral right to manage is an empty claim. You can't separate out educational policy as something that does not affect conditions of work. Further, even under the best of circumstances, to maintain management's right to manage, you're going to have to have very able managers and you're going to have to be on your toes all the time. Any poor administration, any poor enforcement of the agreement, any ill-advised or poorly prepared arbitration, or poorly prepared

grievance settlement, any loose supervision or hasty negotiations can result in a wider scope if the teachers want to move in that direction. Whether the administrator likes it or not, he's going to have to defend his preserve constantly.

Another limit is considerably more important; that is the legal limit. You probably all are much more familiar with this. The legal assignment of authority to superintendents or school boards is probably important and more impressive than anything that might be written in the agreement. But here I am more impressed with the possible width of the scope of negotiations rather than any limit. It seems to me that whatever limits are put in turn out to be fairly broad by the time you have gone through either the courts or appeals to the state government. First, for a board or administrator to insist that something is not negotiable because they have been invested with a public responsibility to make decisions, is probably going to be more of a retreat from dealing with the problem than actually confronting it. If teachers want to negotiate about something, and they feel very strongly about it, I suspect there are going to be negotiations.

Laws can always be changed, and the teachers are very powerful lobbyists at the state legislature. The laws have been affected by teachers; in fact, I'm amazed at some of the pettiness of the laws which teachers have succeeded in getting through the legislature. I would guess they have gone in this direction because they had no grievance procedure or they had no local negotiations. In 31 states, we have minimum salaries. As far as I know, every state has pension and retirement programs of some kind, and then we get these amazing laws of the "right to eat," guaranteeing teachers a lunch hour. The only reason such laws as these have been passed is because superintendents and school boards haven't been doing their duty. To pass such a law through a legislature seems to me to be most ridiculous.

If because of state laws the bodies cannot in fact negotiate and are truly limited by the law, then I think negotiations will not disappear, but that the teachers will simply slide around that and go to the higher authorities, whoever makes the decision that the issue cannot be negotiated. This is assuming that the issue is really of some importance to the teachers and that they feel strongly about it. I just don't think you can avoid negotiating if teachers feel strongly about it; somebody is going to negotiate somewhere, somehow on the issue. In so far as school boards refuse to negotiate in the future on certain issues, I think we're going to probably see a series of strikes around the country trying to resolve this issue.

If I'm right that there are no fixed boundaries to the scope of collective bargaining, or negotiations, and that unions or teachers' associations will agree to no such limits, and that the law gives no firm assurance that you can set boundaries, does this mean then that management is in for real trouble and that every area of their activities are going to have to be bargained about, negotiated? Does this mean that you can expect to see your authority, the superintendent or the school board members, made smaller and smaller, shaved away? I would say no; I think there's going to be plenty of room for authority and for managerial initiative in the same

way that there has been in business and in industry. The manager will still manage; I think he's going to have to deal with a more complex set of forces; he's going to have to be more adept. You're going to have to add another equation in your calculation.

Now I think in this discussion of management's right to manage, you're going to have to understand what you're talking about and be very clear-headed on it. When we say "right to manage" or "administrator's right to administer" then I'll have to ask what is the object of the verb "to manage" or "to administer"? In law, what does a manager have a right to manage? Certainly in industry, where he's dealing with private property, he has a right to manage property, and that's it. He has no right to manage people, except in so far as people voluntarily, through employment contracts, give him an authority, or submit themselves willingly to those managers. Now I'm not a lawyer, but as far as I know, the same thing would be true of a public body. A teacher may sign any kind of an agreement he wants to, but until he signs the agreement, he is not subject to the authority, and he may insist upon all kinds of conditions to be put in that contract. If he wants to put very tough ones in and says "the schools have to be located in such and such a place and I'll only keep so many students" and you want him badly enough and you agree to that, your right to manage has been limited to that extent.

It seems to me this is what we understand by individual liberty. You deal not with a person who is inferior to you. You are dealing with an equal, not a master-servant relationship; this comes from quite a different age and quite a different concept of what society is about. It's a contract between equals. Only as long as the employee finds it convenient and desirable to submit to the authority, does the manager have the authority over him. People can be managed only by their own consent. This, it seems to me, is the essence of the problem and simply has to be faced up to.

The right to manage people, thus, is a right that you gain only through voluntary cooperation of employees. To induce this cooperation, you may very well have to share your authority. What authority managers might have to share to gain the cooperation of others is going to depend on the particular circumstances, the demand of the people, how they feel, and the kind of power they exercise. If they're in a favorable bargaining position and feel strongly about it, it seems to me they have the perfect right to deny them. If you don't reach agreement, you can go find someone else.

Now for managers to make "right to manage" a matter of principle and some kind of a master-servant relationship seems to me is to misunderstand the source of their authority. Just because in the past, administrators or employers have had de facto economic power, where they could crack the whip and pretend that they were the master and the employee was the servant, does not mean that the right to manage has really had anything more to it than an illusory kind of power. It was really an historical accident, a passing phase of our industrial life. The concept of the right to manage probably has its roots, I think, in this master-servant relationship rather than any concept



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of free, voluntary employment contracts which our legal and economic system has given support for 150 years. So if the matter of the scope of negotiations is argued in terms of such principles, then I think you're going to be in for real trouble. There is just no answer to the problem, no solutions, and there's no end to the debate.

With teachers organizing for the first time and in sizeable numbers, and with school boards and administrators facing a challenge to their control from teachers for the first time, I think you're probably apt to have an exaggerated fear of the encroachment on the duties and responsibilities which you hold. I would say it probably isn't nearly as bad as it looks at first. You're going to have to learn a whole new set of operations; this is not at all desirable for busy men with other kinds of responsibilities to take care of. Employers have fought and denounced unions, and I should suspect that superintendents and boards may not fight quite as strenuously, but I suspect they're not going to submit willingly if they can help it. But in the end, employers made their peace with unions, and on the whole, as I've said before, I think they've outmaneuvered them and negotiated. Such men as Gary Morse are exceedingly common among management; much more common among management than among unions. You do have some very able men among unions, but on the whole, not. I suspect that you may have a tougher bunch dealing with teachers, engineers, and the white-collar group; these are more articulate, probably better educated people who know their way around the world. You may have more serious problems; I still suspect the superintendents, anyway, can outmaneuver the teachers, though.

But just because a union or an organization asks for a share in the decision making, remember it doesn't mean that you have to give in to it. It depends on how hard they're willing to fight for their demands, and how hard you as an administrator or a board member are willing to fight to keep the demand out. Ford and General Motors have never agreed to profit sharing, although Walter Reuther has pressed them many times for it. General Electric does not change its offer significantly after it first makes it. Trucking companies, as I've pointed out, have agreed to move their terminal only with the permission of the Teamsters and to build new ones only after negotiating. This is not always because of superior economic force; here's where companies, industrial administrators and managers, have found unions very helpful to their own work of managing. The Teamsters on the Pacific Northwest, for instance, where Dave Beck used to operate, and he was a real businessman, were very good in keeping competition in check. Employers found this all to their benefit. They allowed the scope of negotiations to increase there, because it was in their benefit to do so. General Motors keeps theirs narrow because it is in their interest to keep it narrow.

Now if the bounds are not discernable, then why do I make the statement that there are limits to collective bargaining in the scope of negotiations? This is where I think you need to be wise as serpents. A union does not always necessarily want to negotiate on every item which it can even legally negotiate about. Unions have problems too. There's no indication in industry that unions have pushed massively and exhortively into the vital policy areas of management. Occasionally they have, but usually they pull back and stick pretty closely to job conditions, wages, hours--things that

center around the job quite closely. Both casual and very careful studies have not been able to find any significant encroschment of management or limiting of the usefulness of management in industry.

I think there's some very good reasons for this. If you understand that the union is a political organization with a diversity of interests in it, you'll really understand why there are going to be limits to the scope of collective bargaining. For example, teachers simply do not want to discuss some professional issues. This kind of situation arose in our local school system. The industrial arts teachers didn't want to handle classes for the mentally retarded; they thought only the specialists ought to handle them. Why? It would mean an extra class, probably taking away a free period. The teachers of the mentally retarded wanted to have more free time; otherwise they were occupied with the kids all day long. Well, they took the case to the association, the association took one look at it and said "There's no solving this dispute between the two teachers groups until the two teachers groups solve it." They wouldn't touch it.

Another one is how shall study hours be distributed? Some teachers want study periods back-to-back so they get a nice long 80 minutes. Others would rather have them scattered throughout the day. The teachers have been unable to resolve the difficulty and the associations won't touch the matter until there's some kind of consensus. In New York, they've got a real problem, what kinds of holidays shall be celebrated? In my own home district, the question is, should they get Columbus Day, Veterans' Day,Decoration Day, and a few other days off, or should they take a week in February? The teachers weren't able to resolve the issue, and they decided to leave this up to the school board. This was something they were very happy to have decided for them.

In New York the teachers negotiated not doing unprofessional chores, monitoring toilets, monitoring the halls, escorting kids on and off buses; etc. Well, they finally won their point. Then the question arose, "What's going to happen to the period that the teachers have free?" "We have a free administrative period," the teachers said. The principal said, "No, we have a period in which the principal can use this to direct certain kinds of activities." A lot of the teachers said to their unions, "Look, you're making things worse; I thought this was supposed to be an improvement. Sure, I had to sit in the hall, and it wasn't very dignified, but I was able to read, I was able to grade papers, or work on my preparations for classes, and now I've got to do these darn chores that the principal has assigned." It caused such controversy that the teachers got kind of a compromise that said the teachers will have a free period, but the principals may also direct the activity of the teachers. Each principal went his different way. A strong principal would direct the teachers; a weak principal would give in and let the teachers have the free time. Teachers in School A would look at what happened to teachers in School B and file a grievance. The grievances are piling up, and the union has no way to solve this problem.

So sometimes some union leaders say to the teachers, "Look, we can't negotiate on that because the board has said they won't negotiate." And then they hope the superintendent will back them up on it.

I think that there's plenty of reason for saying that there are probably real limits to the scope of negotiations. You're going to have to try to recognize them, learn how to deal with them, and use them. In conclusion, boundaries cannot be drawn for the scope of negotiations, but as a practical matter, there probably are limits. You don't have to worry about everything coming into the scope of negotiations. Both parties are going to have to decide and reach some agreement about the scope. I think you ought to figure very carefully; if some issue is very important to you, fight very hard to preserve it. When I say fight, I think you're really going to have to use some of the strong techniques and attitudes. The teachers, ff they feel very strongly, and I think you're going to have to try to gauge how strongly they feel, are going to respond, probably, in very much the same way. Get it down to a specific situation, decide whether you want the scope wide or whether you want it narrow, and then work very hard to see that you keep it where you want it.

CHAPTER VIII

# NEGOTIATION STRATEGIES AND TACTICS

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So you'll forgive this touch of pedantry starting off with a quiz, I hope to set the focus for us to entertain some ideas and get to the kind of problems that you consider to be most pressing in approaching the question of collective bargaining in the teaching profession. I'd like to try something else with you. I have always managed to become pretty thoroughly intimidated when I have to talk to my fellow educators and I can never understand all the reasons why that should be so, so if it appears to you that I have a touch of stage fright it's merely because, of course, I have. One way that I handle this is to put the monkey on your back temporarily with the device of the quiz. I'd like your attention to these half dozen simple questions. I ask these questions because frankly I continue to be amazed at the amount of misinformation that exists about the American labor movement from all kinds of groups including union leaders themselves and their members. I think it's important if you're going to be talking about collective bargaining techniques that you know something rather systematic about the group that you are going to relate to. So let's start out by taking a look at some of the conceptions and misconceptions that are current about the labor movement.

Now the first question. Union membership has increased in the United States during the past 20 years. Is that true or false? That's false. Back in 1946 we had in the United States 18½ million union members and this represented about 37% of the nine-to-five work force. Now in 1966 in our best judgment, and it's not awfully easy to get exact figures because there's a certain amount of turnover, a certain amount of laxity in reporting of membership, but it is estimated by the Bureau of Labor Statistics that we have about 16½ million union members. There's some two million fewer and this represents only slightly better than 29% of those that would be eligible for union membership. So the labor movement has declined absolutely, but even more importantly, it has declined relatively.

I think for our purposes today it is also important that we take a look at the compositional change that has taken place within the labor movement because certain sectors have declined while others have increased. In the area of the public sector, including education, there has been a steady advance. The decline has come in those industries that have been most impacted by the new technology. Not because the people have become disenchanted with unions, but simply because there is less employment in what was formerly the traditional bastions of the trade union power. We all know that a statistic can conceal more than in fact it reveals. When you say 29% of the work force, we're recognizing that in certain sectors like transportation, about 94% are unionized, in manufacturing about 78%, while in other sectors where people presumably are eligible for union membership there is hardly any penetration of note; i.e., in agriculture or among retail clerks. I'm going to list the four fastest growing unions in the United States. They may vie from one quarter to the other but these four all have substantial interest to the public sector--State, County, Municipal

Workers, American Federation of Government Employees, American Federation of Teachers and the Teamsters Union. I think this has pretty clear implications about the future of collective bargaining in education.

Let's take a look at the second proposition. Strikes have increased in frequency and duration, during the same period. Is that true or false? False. The majority of the people believe that there has been an increase in strikes. Why do you think that this should be so? It is not that there are more but that the people hear a great deal more about strikes. In about the first quarter of 1965 the 25-year low mark in strike activity in the United States was reached. About seventeen hundreds of one per cent of the total available work time was lost in the first quarter of 1965. This averaged out to about three hours per year per unionized worker in the United States and that's about as minimal as you can get. By a very substantial margin the lowest incidence of strike activity of any industrial nation in the world.

Also the people really are getting an uninformed view of unions because of their treatment in the public media, not only uninformed but misinformed. I'm not really here to take the public media to the woodshed by the heels but it adds up to some generalizations about the labor movement that impede effective bargaining, that arouse some anxieties that are misplaced and not helpful in the least on the part of people that have to meet with trade union groups.

Here is another misconception. Do union leaders effectively influence the political choice of their members? No. Two studies came up with surprisingly consistent results in different parts of the country, one that was conducted in Princeton, another at the University of Illinois. It showed that of union membership votes about three out of five vote the same way as their union leaders do. I would like to suggest there is some influence, however. When non-unionized workers in the same income groups and industries were checked, exactly the same ratio held true, so there was no statistically significant difference at all demonstrated between union and non-union groups in their voting preferences. So if union leaders are effective in influencing political choice, we have precious little evidence to demonstrate that this is so.

For an example close to home we can check out what happened in the Rolvaag-Keith fight during the past year. The overwhelming majority of trade union leadership in the State of Minnesota backed Sandy Keith. Five out of six of the officers of the Minnesota Federation of Labor, the heads of the central bodies in St. Paul, Minneapolis, and Duluth, the heads of the Joint Teamsters Council both in the northern and the southern part of the state, the steelworkers, the head of the Public Employees supported Keith. And yet the overwhelming endorsements which represented the rank-and-file repudiation of that leadership decision went to Rolvaag and were strategically critical in effecting his nomination in the primary.

We have the historical example of John L. Lewis, who laid his job on the line after a fight with Roosevelt. He instructed CIO membership in the United

States to support Wendell Wilkie and be offered them the alternative that if they didn't, he was going to resign. That's how John L. Lewis lost the presidency of the CIO. It's not to say that unions don't have a political function and instrumentality but that it's apparently not in the area of changing the minds of individual voters and selecting their own candidates, but in their get-out-the-vote activity. This is a different proposition entirely. Their registration drives in getting the people actually to the polls represents a real political instrument and gains some political weight. Their lobbying activities are increasingly more sophisticated, more knowledgeable. There is more widespread use of research departments and of legislative committees. It's a phenomena to be recognized.

The next question: Is it true that few really prominent union leaders are active in the Republican Party? Let's talk about how many are active and then you make up your own choice as to the precision with which those adjectives should be used. Let's take a look at some of the prominent Republicans in the labor movement. Jimmy Hoffa is a registered Republican and certainly a prominent trade union leader. His predecessor, Dave Beck, was a Republican. The president of the fourth largest union in the United States, the Carpenters, Morris Hutchinson is a Republican and was a candidate for the lieutenant governorship in the State of Indiana. The immediate past director of the Building Trades Department, Richard Gray, was Republican National Committeeman. There are at least three members of the Executive Council of the AFL-CIO who are registered Republicans. John L. Lewis is no longer on the scene but he was a registered Republican who voted Democratic just twice in his life according to his own admission. On the Executive Council of National AFL-CIO, there is a count of nine to three, nine Democrats and three Republicans.

In a word, there is no such things as the American labor movement. This has been cited many times. It's generally a quite loose confederation of labor organizations with distinctly different kinds of characteristics. If you're going to have a definition of unions it better be a pretty broad one. For instance, they vary from very small to an international union of about 135 members to a very large one, such as the million and a half member Teamsters Union.

The fifth question: Is it true that a high degree of identification and pride in an occupational profession seems to impede unionization of the group? That's false. The higher the degree of identification in any occupational profession, the higher is the potential for unionization according to historical experience. The highly skilled crafts were the first to be unionized. They were the ones that survived downturns in trade union membership over a time of setbacks such as in the 1920's. You see where there is a strong identification, unionism has become possible so that you have organizations like airline pilots, the Screen Actors Guild, the American Newspaper Guild, and the Teachers Union. Unionism tends to move much more slowly among clerical groups. For instance, it seems difficult to organize office workers merely because there isn't a strong identification with what any one office

worker does. You ask an office worker what he does, and he says "I'm a collator operator." That's interesting; what's a collator operator? It isn't easily identifiable. There is a clear trend that's already established. There'll be more unionization of teachers, unquestionably so.

The sixth question: Almost all income receivers in the United States are members of some functional economic organization. That's true. By functional economic organization I mean an organization that in some recognizable and discreet manner purports the workers and economic interest of its membership. Farmers have the National Farm Organization, the National Farm Union, and the Farm Bureau Federation. Industrialists have National Association of Manufacturers. Merchants have the Chamber of Commerce. Realtors have their organization. The large groups that don't have functional economic representation are starting to recognize that they need it, and are forming it. This is a historical and discernable trend. The people intuitively have come to recognize that if they don't have some kind of economic organization representing their interest in a significant way, they better damn well get themselves organized.

One of the large unrepresented groups that still have a discernible interest, a couple of them, are consumers as such. There's a recent and encouraging growth in consumers' organizations, and the poor. The poor are now organizing. Teachers have felt that they have not had substantial and significant economic representation. I don't think that it's my function to stand here and argue with you but the NEA has not represented the economic interests of the teachers adequately. If the teacher feels that his economic interests are not being properly represented, he will unionize, and increasingly teachers are feeling that's the case.

Let's then move to the area of collective bargaining techniques. This can become very easy if I just stand up here and lay out some propositions and ask you to respond to them. I ask that at each one of these tables you would constitute yourself as a negotiating group representing the school system. You are to prepare yourself to meet with the negotiating committee from the teachers' group. You can constitute yourself in any way that seems appropriate to you. Select someone to be a chief spokesman and let's take this a couple of years down the road in the State of Minnesota. The last session of the legislature has amended the Minnesota State Public Employees Law to include the school teachers. There has arisen within your school system a teachers' organization approaching you for professional negotiations or collective bargaining. Take 15 minutes and go through the steps you think necessary to prepare for negotiations.

CHAPTER IX

# IMPASSE AND ALTERNATIVES--MOCK NEGOTIATIONS

ED LARSON AND CLIFF LA VALLEY
Federal Mediation and Conciliation Service

The following is a presentation by a group from the Federal Mediation and Conciliation Service. The people taking part are full-time professional mediators who spend more time at a bargaining table in one year than most people would in several lifetimes. This does not guarantee them answers but they have had the exposure. They are thoroughly familiar with the process of collective bargaining. In their presentation, they are dealing with a superintendent, two members from a school board, and two teachers who are an "Intrafaculty Committee." The mock negotiations play has four scenes: in the first one, the superintendent and two school board members are discussing the letter they received from the Intrafaculty Committee; Scene Two involves the discussion between the two teachers; Scene Three is the meeting between the superintendent, two school board members and the teachers; Scene Four is the meeting handled by the mediator, first with all groups present, then meeting them separately, and then together again. This was a rough, extemporaneous presentation which was taped and not a finished, written playlet.

## CHARACTERS

Superintendent of Schools . . . . . Cliff LaValley

First School Board Member (extremely conservative agrarian) . . . . . Arthur Pedersen or "Pete"

Second School Board Member (personnel director in a non-union plant) . . . . . Ed Larson

Intrafaculty Committee

First Teacher . . . . . Carver McGaughey

Second Teacher . . . . . Donovan Mayne

Mediator . . . . . .Barton Hess, Jr.

SCENE I

Board Meeting room. The Superintendent of Schools, LaValley, and two school board members, Pedersen and Larson, are seated at a table.

LARSON: Well, Superintendent LaValley, you've called us down here. What's this all about?

LA VALLEY: I'd like to say a few words first. Thank you very much for coming. As you both know, for years we've had a very happy school district. It's gone along efficiently and progressively. But things have been happening in the metropolitan area and the competition for teachers has been sharp and difficult to handle. Recently the teachers have had several meetings and have chosen an Intrafaculty Committee to represent them to meet with me and the school board. I have this letter requesting a meeting and naming a number of issues. My recommendation to you, gentlemen, considering the history of this country and considering what's going on in the metropolitan area, is to sit down and listen to the teachers.

LARSON: I'm opposed to it. Sit down and listen! Why should we? Why bother talking to them? We know what they want and I'm sure Mr. Pedersen agrees; we'll just say no.

PEDERSEN: I'm against meeting with them. Send them a letter saying "no."

SUPT. LA VALLEY: Please. You've got to appreciate the fact that these teachers spend eight hours or more with our sons and daughters. We owe them not just a cold "no" in a letter. We should give it to them orally.

PEDERSEN: Nonsense. I don't know why we have to go through all this cotton-picking tomfoolery.

LARSON: Next thing you know that teacher group will want to tell us what books we're supposed to use and then there'll be no end to it. Of course, I've got to say this, Pete, down in my factory we don't have a union. We had one a year ago but we took care of it. Now, whenever we hear of some kind of problem developing we have a little informal meeting with the people involved and we don't usually give them any concessions, but we do sit down and talk to them. Sometimes this releases some of the steam, so it might be an idea.

PEDERSEN: By cotton, no! It's just encouraging them.

LARSON: I don't know. It might be better to meet and confer. What do you say, Superintendent LaValley?

SUPT. LA VALLEY: Yes, I think so. I'm glad you made this point. If we do not sit down and talk to them, they are going to look elsewhere for help. It's up to us to try and meet this the very best way we can. As superintendent it is my responsibility to see that we have good teachers and I don't like to see this exodus into the metropolitan area.

LARSON: That's right. They pay much higher wages there. We can't pay those kind of wages but it seems to me that the best way to keep these teachers from joining any union, which would give us a lot more headaches than we have now, is to sit down with them, courteously, and listen to what they have to say.

PEDERSEN: Well, do we know whether these people are members of some union? I understand that quite a few of them are and this seems to be some kind of a composite group of the two organizations. Do we have any formal obligation...

LA VALLEY: They are not functioning as members of unions, only as an intrafaculty committee.

PEDERSEN: I'm still opposed to it. No meeting.

LARSON: Pete, I think we ought to follow the Superintendent's suggestion. After all we did elect him, so we should go along with his recommendations. Do you have an appointment to meet with these people or can we take five or ten minutes or what?

LA VALLEY: Maybe I presumed a little bit too much...I did arrange a meeting.

LARSON: O.K. Come on, Pete, let's agree to meet them. After all, we are just two of the school board group and we are in no position to be making any concessions without a full knowledge of the board. But we can listen to what they have to say.

## SCENE II

Teacher's lunchroom. Teachers McGaughey and Mayne are talking over cups of coffee.

MC GAUGHEY: Well, Don, we have a real problem here, a problem of procedure. The school board wants to treat us all as individuals, to make private contracts with each one of us. We just have no bargaining power with these people. They just say no to everything. What are we going to do? We've got to get their attention. I think we need some sort of demonstration or something to alert them.

DON MAYNE: Well, I don't know about this demonstration business. You know what I was concerned about was losing capable people, teachers who had very good rapport with the student body and who were well trained, and they leave to teach in the metropolitan area because of the attractiveness of the wage scale. My concern is from the standpoint of a professional teacher. I want to gain better financial status so that the students will have competent teachers. There are some very gifted students here in this school system and the exodus of fine teachers has hurt them. If we could get the school board to understand this and a few other issues, that is my wish. I don't think we should have any rash demonstrations. This is foreign to a professional group of highly talented and educated people. This is beneath our type.

CARVER MC GAUGHEY: Well, I can go along with you, Don. I don't want to do that sort of thing either. But we've got to put some pressure on. Those teachers that left--they tried to solve their problems individually. It didn't work, so they picked up and left individually. We want to hold our teachers here. So we have to get some of their gripes processed and obtain favorable results. Just picking up and leaving is no solution. We've got to get some issues settled. We have to bring some pressure.

DON MAYNE: I know there have been some unfair dealings with individuals. But my real interest is in improving our professional standings so that we can do more for the students.

CARVER: Wait a minute, Don, you're talking like the school board when you say we want to find ways where the teacher can be of greater benefit to the students. We <u>are</u> of great benefit to the students; what we want to do is to get paid for it. We want some recognition of that as a body. We want to be recognized, that's our problem.

DON MAYNE: We want to be recognized as a body, but the type of action we want to engage in, Carver, this is something we want to consider very carefully. Our position as professional teachers makes us understand the educational system better than the people on the school board.

CARVER: Well, I go along with you there. But when we sit down with the school board and superintendent, I don't want you to sell our people short. You can't just say, teachers have these gripes, please can you give us a little satisfaction? We want to impress them and I want you to give me a little support. I am a professional, too, but I think we have to apply the pressure. We've got to have concerted action, get these people to recognize us and give us some sort of procedure to process our gripes.

DON MAYNE: Well, let me explain. I will go along with your thinking that we have to put up a uniform front when we are talking across the table with the superintendent and the board. This is true, but I don't think we should threaten them with any kind of drastic action. We just want to solve our problems, especially the salary scales.

CARVER: Well, Don, I sure hope your mild method works but I have reservations about it. I think we are going to have to put some pressure on if we're to get any satisfaction.

DON MAYNE: Well, let's get going down to the board room and see what happens.

## SCENE III

Board meeting room. The superintendent and two board members are already seated at a table. The two teachers enter and the superintendent introduces them, they shake hands all around, and then are seated at the table.

SUPT. LA VALLEY: I should say this to begin with. The members of the board here have reluctantly agreed to meet in this little situation. It's very unusual for us. I'm hopeful that after a few comments all of our problems will be solved.

CARVER: Did you get our letter...?

PEDERSEN: Outrageous. Absolutely outrageous.

LARSON: We have your letter.

DON MAYNE: Could I just start this off by saying that we appreciate very much your meeting with us. We are entering this situation with a great deal of optimism. We hope to...

PEDERSEN: We didn't agree to anything. I don't know where you got that impression.

CARVER: We share your hope that we are going to be able to resolve some of the problems that we do have. We want to, not put you on notice, but we want to impress upon you that we do have some little problems that we want some satisfaction on and we would like to...

PEDERSEN: Why don't these people come with their problems individually? We sign a contract with them individually. Why do we have to talk collectively?

CARVER: Well, we have tried that over the years...

PEDERSEN: It's worked very well.

CARVER: And we've lost a great many of our teachers that way...

PEDERSEN: That's <u>our</u> problem, sir. We run the schools. We run this school.

CARVER: That's our problem too, sir. Do you realize what's happening to the educational system when the teachers are going to the metropolitan area for the improved salaries and other items which we enumerated in this letter, the various issues...

PEDERSEN: Mr. Superintendent, will you find out what these people want? I've got things to do. I've got to get my corn planted.

SUPT. LA VALLEY: Would you gentlemen--will you, please! Wait a minute. Mr. McGaughey, get to the point.

CARVER: We would like to start off with four items and then we've got some other problems.

PEDERSEN: So have we, taxes, that's our problem, taxes.

CARVER: Well, we help pay those taxes. We'll go along with you if you want to cut down those taxes. We can cut out some of our services, too. We have four items here which we'd like some satisfaction on, and I'd like to present all four before you start storming on the first two.

PEDERSEN: You're storming. You asked for this meeting. Things were quiet.

CARVER: You're right. We did ask for this meeting. We weren't getting satisfaction out of the old method which you seem to want to cling to. First, we want to make it clear that Mr. Don Mayne and I are here in a representative capacity. The teachers picked us to represent them and we are the conservative element of the teachers here. Now if you want the other element...

DON: I hope you understand before we present the four items, Carver, let me say that we as a group want the school board to understand that we want to cooperate and build this school system together to benefit the community and to benefit the children...

PEDERSEN: We have been doing a good job of it. By ourselves.

DON: I think we could do a lot better job.

PEDERSEN: At whose expense? More taxes on my cows.

CARVER: I hope you'll let me get through the four items. The first is that we are here in a representative capacity. We want recognition, formal arrangements. Second, we want a grievance procedure, a formal process for a teacher to be heard.

LARSON: He can do it now. The door is always open.

CARVER: The door is open but between the entrance and the exit there is no settlement. We would like to have a formal grievance procedure and we don't want to forget our salaries...what's that?

LARSON: The salaries are excellent. And the rent cheap.

DON MAYNE: The rent is the same in this community as...

LARSON: and stores sell things a lot cheaper...

CARVER: I thought I had permission here to go through four items and I only managed...

LARSON: Well, go on with them.

CARVER: We've got another important item and that is the amount of free time that the teachers have to spend in extra-curricular activities such as monitoring the lunchroom and chaperoning this affair and...

PEDERSEN: Part of the job. Part of the job.

CARVER: Extra sports and always on call, twenty-four hour call. The work is not distributed in an equitable manner and we don't get paid for it. It's all for the love of the community and your credit.

PEDERSEN: Don't you like to eat lunch with the children?

DON MAYNE: It has become a burdensome thing. We have highly educated, professional people working for the system and their time to do preparation work is infringed upon. Some become disciplinarians rather than professional educators.

SUPT. LA VALLEY: Is that all four of your items?

CARVER: We have given you four little problems...

LA VALLEY: Little?

CARVER: If we get satisfaction on these four, we'll be very appreciative and have some others for you. We would like to have some answers on these.

LARSON: We don't have time for this sort of thing.

PEDERSEN: I've gotta go. I've gotta go.

SUPT.
LA VALLEY: (THIS IS AFTER SOME CONFUSION AND TALKING ALL AT ONCE, ETC.)

Mr. Pedersen and Mr. Larson ask that I speak for all of us. We see no merit in the first three issues. We will give some thought to the problem of the lunchroom.

CARVER: Some thought?

LA VALLEY: Some thought. When we have concluded this thinking, we'll get in touch with you.

CARVER: Don't you wish to discuss further?

LA VALLEY: No, you've had it.

CARVER: This is the same answer I would have got if I came in here as an individual. We're in a representative capacity.

LA VALLEY: The bell rang. You gentlemen had better get back to work now.

CARVER: I have another suggestion. We need a third person here.

PEDERSEN: A third person? We're five now. What do you mean, a third person?

CARVER: You have taken a negative position and we are not going to back off from ours; I assure you we had better get a third person here. Someone who is objective. Perhaps a mediator.

PEDERSEN: A mediator? We don't need anyone else to tell us how to run our school district.

CARVER: I just dread going back to the teacher group and telling them...

SUPT.
LA VALLEY: We don't want any overt action. We want to discuss it.

LARSON: What are you talking about--a mediator?

CARVER: This is something that is washing over into education. This is where a third party comes in who has no interest in the merits of the thing but...

LARSON: How does he know what we're talking about then?

CARVER: He listens to both sides.

SUPT.
LA VALLEY: It's a kind of coming thing. I would make the suggestion, let them go ahead and call in a mediator. This won't change our thinking.

PEDERSEN: Can this mediator tell us what to do? We know what our problems are.

LA VALLEY: As I understand the function of a mediator, he cannot make us do anything. All he can do is advise with us.

CARVER: Let's set the meeting soon, prior to the signing of next year's contracts.

PEDERSEN: Are you threatening us?

LARSON: Never mind. Let's try it. Mr. Superintendent, go ahead and make the arrangements for the meeting with a mediator.

SCENE IV

Board meeting room. The five regulars have been joined by the mediator, Mr. Barton Hess. They are all seated around a table with Mr. Hess on one end, the superintendent and two board members on one side, the two teachers on the other.

HESS: Well, gentlemen, I have talked to Mr. McGaughey and Mr. LaValley. I want you to know that I am here as a third party, a neutral party. I am not here as a qualified educator, but as a qualified mediator and conciliator. I understand briefly the nature of the problem here; relationship is part of the problem. Conciliation is a method upon which the relationship problem can be solved. I want this meeting to be informal. But I prefer that you don't all talk at once. I want to understand what the issues are. I'm not interested in your justifying your position. I don't care who speaks first but as long as Mr. McGaughey called me first, why don't you acquaint me with the issues as you see them? I will then hear from the board. If I feel it advisable, I may want and prefer to talk to you privately. I want this meeting to be informal, but I want it to make sense in behalf of both parties. Mr. McGaughey, please go ahead.

CARVER
MC GAUGHEY: We appreciate your presence here, Mr. Mediator. When we brought our problems to the attention of the school board, we obtained few results. We have four problems. The number one problem is that Mr. Mayne and I are here in a representative capacity. We are in touch with all of the teachers and what we want is formal recognition. That's number one on our list. Number two is a formal grievance procedure. Our teachers have come in individually and talked to the superintendent, who is the go-between. All the teachers get is a very curt, short answer, and after a long time are told

MC GAUGHEY: (cont'd.) their problems are under consideration. Then they never hear any more about it. We want a formal procedure, an effective one. We have complaints, grievances, differences of opinion, and a lot of gripes. We want a formal procedure for processing these problems. That's number two and a very strong item. The third item is particularly critical in this area and that's our income. We want better salaries. Mr. Mayne will present something on this item.

DON MAYNE: As you know, we're in an outlying district. Our expenses are the same; we pay the same for a loaf of bread as they pay anywhere else. We pay the same for services, our rent costs the same and our background is the same. We have as good an education, we are as well equipped for our job as anybody. Many of our teachers are actually commuting from here to the metropolitan area in order to live a decent life of a professional person. There is no reason why a teacher should not be equal to the other professions--doctors, lawyers, and others who are able to earn adequate income. After all, the number of hours that a teacher puts in during the year is far in excess of the factory worker who puts in 2,000 hours. The teacher exceeds this greatly but his salary remains low. This is the situation disturbing us because we're interested in this community and this school system, and we want to improve it, to attract teachers with greater qualifications so the children will benefit as well as the community.

MC GAUGHEY: Our last item is very important to us. Our teachers are subject to call on any matter. We have to sit in with the students during the lunch period, chaperone some social affair, or help out at a sports event; we're all on call. We cannot say no. This is unfairly administered. Some teachers are overburdened with these duties and no one gets paid for it. This is for love of the community, love of the student body, love of the school board, which takes all the credit.

LA VALLEY: Let me ask one question. Do we have to sit here and be insulted by these two?

HESS: You are getting quite personal, Mr. LaValley...

MC GAUGHEY: He should have heard the teachers...

HESS: Let me say this to both parties. It ought not to be necessary for me to go through the usual setting up exercises that I go through day after day. I expected a more professional attitude in your approach to one another. I said this meeting was informal and I meant it up until now. But if you are going to all start talking at once, we're going to proceed more formally.

SUPT. LA VALLEY: All right, all right. Can I speak now?

HESS: Mr. LaValley, just one moment. I want to ask a question of Mr. McGaughey. Do I understand you are asking formal recognition of the Intrafaculty Committee?

MC GAUGHEY: The state law permits them to give us recognition and we don't see why this type of thing can't be forthcoming. We want to work together with the school board. We haven't been formally elected, but we canvassed the teachers and they indicated that we could meet with the school board with their backing. Mr. Mediator, you have had a lot more experience in this than we have. We're asking for formal recognition.

HESS: Well, Mr. McGaughey and Mr. LaValley, I hope you'll bear in mind your statement if I get into a position of offering suggestions a little later. Mr. LaValley, will you please state your side's viewpoint of the four items introduced by Mr. McGaughey. Let us have the position of the board.

LARSON: This is all nonsense. What authority do these people have? All right. I'll listen...

SUPT. LA VALLEY: I would like to speak. But before I begin, I want to make an unofficial protest to some of the remarks made by the gentlemen, particularly the one about the school superintendent and his handling of grievances in a curt manner. I deny this. I think it's a personal attack and I am deeply hurt by it. And...

MC GAUGHEY: Could I just...

SUPT. LA VALLEY: Will you have him keep quiet...

PEDERSEN: I was opposed to this in the first place.

HESS: Mr. McGaughey, the school board has heard your position. I don't want any more crossfire at this table. The problems are significant. Let's listen to Mr. LaValley. Go ahead.

SUPT. LA VALLEY: I'll take the issues one at a time, and briefly, because there's not much to them. Number one on the question of recognition. We don't intend to recognize anybody officially. We are here to listen and are open-minded if any suggestions have merit. We do not believe that there is anybody to recognize. We may have other meetings and I am certainly hopeful that they will be conducted in a better fashion than this one. As I said, my door is always open and I will always listen to any grievance of any of the teachers. There's certainly no

LA VALLEY: (cont'd.) need of involving these busy gentlemen in that process. Number three, salary. It is true we are somewhat under the metropolitan level, but everyone knows that you can get everything cheaper in this community--rent and eggs--they're a lot fresher too. You take all this into consideration, and our salaries areperfectly adequate. On the fourth item, where the teachers are requesting free time at lunch where they can get out by themselves away from our children, I think maybe we have an idea what we can do...

PEDERSEN: You're not going to hire more people?

SUPT. LA VALLEY: Oh, no.

HESS: Did you finish, Mr. LaValley? If you did, Mr. McGaughey, do you have...

LARSON: Aren't we going to do more than this? I thought...

HESS: Just a moment, Mr. Larson. Did you have some comments, Mr. McGaughey?

MC GAUGHEY: I think we have aired this very well. You got their position. They just said no to everything with one possible bone on the last item. That's the answer we've been getting all the time. I don't know if we can hold our group together under the present conditions, and I can assure you that if this method we're using here doesn't get results, then we're going to be looking around for a method that will.

LARSON: Well, Mr. McGaughey, just a moment now. If you want to use...

HESS: Please, both of you. We have had the problems presented. I can see that neither side is familiar with the processes of conciliation. Normally, I would try to keep both parties together until an agreement is reached. But in light of the unfamiliarity with the mediation process, I am going to have private conferences with both sides to see if I can be somewhat helpful on these issues. Now if Mr. McGaughey and Mr. Mayne would leave for a while, I'll talk with the school board and Mr. LaValley for a few minutes.

LARSON: We don't have anything to hide. We'll say right out in front of them...

HESS: I understand that, Mr. Larson...

MC GAUGHEY: Any way you wish to run the meeting, Mr. Mediator, is all right with us. We'll leave.

TEACHERS LEAVE. AFTER SOME MOVING AROUND, TALK RESUMES.

SUPT.
LA VALLEY: These gentlemen weren't even elected. They canvassed around, they said. They asked to come in and insult the superintendent and the board and they're here on that basis. Nevertheless, as superintendent I must operate these schools and keep everybody happy, including the children. I'm afraid this will simmer down to the children who are very astute and bright and quick to catch on; I'm afraid it will hurt them. So I'm willing to work with you to find some solutions.

HESS: Mr. LaValley, I like your conclusion much better than your facts. Let me illustrate why. I think you are right. I think these problems can be resolved, a solution can be found that the board can live with. The facts of the matter are somewhat emotional as you view them.

LARSON: We can't give them the metropolitan pay rates, Mr. Mediator.

HESS: Let's take them one at a time. First, the issue of recognition. I suggest to you now that this is almost a mute question. There isn't any issue of certification, only recognition. I suggest to you that you've already conceded that point. You've met with them in a direct meeting. Now you've met with them with a conciliator present. Mr. LaValley, you may not be happy with the attitude of the representatives, but I suggest to you that they may be a great deal more conservative than the rank-and-file teachers. This is possibly true.

SUPT.
LA VALLEY: Maybe it's true about Mayne, butMcGaughey is just a malcontent, mal...

HESS: Let's talk about the issue of recognition. It seems to me, Mr. LaValley, that you may well have conceded this point and perhaps to the benefit of all concerned, by your willingness to meet with them.

SUPT.
LA VALLEY: We've always been willing to meet. My door is always open. But what burns me up is the kind of people that our teachers have selected. They mix up what they say are the issues along with slander and insults on the school board and myself...

HESS: Mr. LaValley, please believe me, the remarks that have been made in this conference so far are so mild, very mild, to what I'm usually used to. Let me point out an alternative to you in this question of recognition that it would be well to consider. We have the recognition of an informal sort sort of situation, whereas the alternative may well be a San Francisco or New York. I want you to think about these things.

SUPT. LA VALLEY: Are you comparing our little district with New York?

HESS: If it happened there, it can happen here, Mr. LaValley. Now let's take up the second question of grievance procedure. You've already indicated the door is open. What the teachers seek is a somewhat more formal approach than the very simple open door. When I spoke to Mr. McGaughey on the telephone...

LARSON: Say, if you spoke to him already you probably have all the answers and think he's automatically right.

HESS: Mr. Larson, I spoke to him briefly as I did with Mr. LaValley. Tell me, a person with your experience in dealing with people probably will realize the significance of having a formal procedure. In your own situation, I would expect that your foremen are authorized to resolve any problems in the plant. Is this correct?

LARSON: Usually.

HESS: And he has authority up to a certain point?

LARSON: Yes, you are right.

HESS: All right. Let's talk about a system that may work here. The first step of the procedure is the relationship of the teacher with Mr. LaValley. Secondly, if it's not resolved there, to the school board or their representative. I suspect, Mr. Larson, this is the same procedure you follow in the plant.

LARSON: Basically, basically.

PEDERSEN: I solve all the problems on the farm. I solve them all. What about the question of salaries?

LARSON: Now they want the metropolitan rate. We may have been in a position to do something, but when they start talking the metropolitan rate, the school board just throws up their hands and shouts, no.

HESS: All right, gentlemen, let's leave that question for a moment because I know time is of the essence to you. I'm due in Washington with the General Electric negotiations. They have three cabinet officials on it now but they're going to need some help. You've indicated something can be done with the issue of duty-free lunch periods.

SUPT. LA VALLEY: Yes, our plan is to arrange so that at least one day a week the teachers won't have to work out a shift kind of thing. A teacher will have one free day. This is a 20 per cent improvement. One day...

HESS: I might say that you're fortunate not to have negotiated with the automobile workers but be that as it may. Let me now spend a few minutes with the faculty committee and see if we can work out a solution that does equity to the school system, to the school board.

SUPT. LA VALLEY: We want to come to agreement, but it's impossible with...

HESS: Mr. Larson, I'm going to need a little more assistance from you, drawing from some of your experiences in human relations...

LARSON: I understand, 95 per cent of the problem is this human relations...

SUPT. LA VALLEY: One parting remark...I think we should all understand that we're not building cars, we're building children, we're building future citizens, people who may be presidents of the United States at some time. I think you should keep that in your mind when you're resolving things and not the problems of General Electric or General Mills.

HESS: Very good, Mr. LaValley, I understand. I don't simply hold the theory that they're being strangled by their white collars, but by the same token, the sample problem does exist. For example, living costs have gone up three per cent in 1966. Teachers read and know wage scales probably better than the members of the UAW in the automobile plants. But I am not making any decisions here for you. You are going to have to make them yourself. This is not arbitration, there's no binding decision. I am hopeful that the parties themselves will assist me in finding a solution. Now I'd like to talk to the faculty committee if I may.

LARSON: What's he going to do when he talks to them? Sell us down the river?

LA VALLEY: I don't know.

PEDERSEN: I may lose my farm.

LA VALLEY, PEDERSEN, AND LARSON ALL EXIT. MC GAUGHEY AND MAYNE RETURN AND ARE SEATED AT THE TABLE WITH HESS.

HESS: Well, Mr. McGaughey and Mr. Mayne, the superintendent was indeed speaking for the school board.

MC GAUGHEY: We found that out long ago. We don't need you to tell us that.

HESS: I want to caution you though. You are not dealing with people that will come quickly or easily to a negotiated settlement, so I advise you not to be so critical but to make more effort toward offering a constructive idea.

MC GAUGHEY: Mr. Mediator, that's one of the things I'd hoped would come out of this meeting and we're depending on you to bring this about. But I want to point out that they take offense at everything we object or want changed. We're seriously considering getting the teachers together and asking them not to sign contracts until we give the word and until we have the proper conditions. I don't think the school board or the superintendent realize how desperate the teachers are. Those four little items were just a beginning. We had a list of complaints three pages long. There was one person dismissed unfairly and it was quite a popular issue. Buf if we don't get some sort of communication going between the school administration and the faculty members, anything is likely to happen. This is why I am sitting here as I am.

HESS: Let me say this to both of you. I want to improve the communications. I want to make a contribution here. Now I suggest that you are more apt to do it with Mr. LaValley who evidences a sympathetic ear even though you may not feel this at all times. You know the board...But first of all, Mr. McGaughey, I think they have in a manner conceded the recognition issue. Now don't get your hopes up too high. They've conceded it by sitting down with you today, but don't push it. I think we can get them to agree to schedule meetings with you. But no highly formal recognition.

DON MAYNE: We are well aware that these things are now going through the courts and perhaps will be tackled by the legislature. As long as we can communicate and they will listen to our problems and give us some sort of action, what do we care.

MC GAUGHEY: We'll try, on your suggestion; we'll try to see if we get results that way.

HESS: All right, let's lay that on the line and take up the grievance procedure. When I talked to you on the phone, I had not mentioned to the school board your suggestion or proposal with respect to final binding artibration...

MC GAUGHEY: That's what we want.

HESS: Mr. McGaughey, you're not going to get it. You better make up your mind to that. I've not mentioned it to them because you're going to blow any chance you have of getting the type of recognition, the type of procedures you want here to make sense out of this situation.

MC GAUGHEY: What other alternative is there if...

DON MAYNE: We know, too, we're on the carpet now. We'll be the first ones to go if we don't get some protection.

HESS: Let me suggest basically a three-step procedure. Step number one is the procedure between the teacher and the superintendent. He's a nice fellow, hands tied a bit by the school board. But his stand might improve with the other two steps following the first. The second would be between the teacher and the school board or some representative. Step number three would be in the absence of agreement between the teacher and his representative and the school board and/or their representative that you seek an advisory opinion from a third party. Basically that is what you are doing here today. I have no authority to make decisions, only to try to persuade you and the school board to some formulas.

DON MAYNE: Will the school board agree to that?

HESS: I don't know. I want your support and I want you not to ask for the binding arbitration.

DON MAYNE: I think it's a step in the right direction.

MC GAUGHEY: We could certainly try something like that. That sounds good to me.

HESS: Now with respect to the item of salaries. They're absolutely adamant on this question.

MC GAUGHEY: So are we.

HESS: And you are seeking absolute parity, amounting to as much as 700 dollars. You're simply not going to achieve...

MC GAUGHEY: We can use that money. They claim it costs less to live here. But the costs are almost idential with the metropolitan area. Prices of homes are the same, and even the teachers that stay in the summer time take employment in the Twin Cities. They should be able to go on in graduate work or take trips to broaden their cultural background. The teachers are a close knit group and we know how much they make in the suburbs and they know how much we do. They're the royalty of the teacher profession.

HESS: This differential exists in all walks of life, between Plant A in the metropolitan area and Plant B in the south or in the rural areas. Now this is a fact in...

MAYNE: They're not going to come up with anything.

HESS: Mr. Mayne you're not going to achieve parity now. If you're willing to be satisfied for something less, maybe there's a possibility.

MAYNE: We don't have to make it all in one leap. I don't think this.

HESS: All right. Perhaps an agreement that the increase that was granted in the metropolitan area will be given here. Keep in mind that there's a percentage differential now. If you're able to get this school board to agree to matching metropolitan increases, you would begin narrowing the percentage differences by that act.

MAYNE: Well, can you get that out of the school board?

HESS: I've not explored it with them yet. The question of duty-free lunch period. How serious is this?

MC GAUGHEY: Oh, that's the free work we get no credit for; the school board claims it. The teachers are fed up with the situation. We have our own lunchroom where we'd like to meet and discuss some of the pupil problems we are meeting day to day. We can't. We have to police the student lunchroom.

HESS: You mean that when you teachers are together you discuss pupil problems?

MAYNE: That's right.

HESS: Amazing. Well, Mr. LaValley said that he had some sympathy to this particular proposal of yours. How about a duty-free lunch once a week?

MAYNE: In the other school systems they have it rotated so you are on duty only two or three times a month. Surely they could do better than to be free only once a week!

HESS: Would you agree if a rotation system might be worked out?

MC GAUGHEY: Yes, if you can get some kind of rotation system, but you as the mediator hold out as long as you can for as much as you can in our favor.

HESS: Well, Mr. McGaughey, I'll make a promise to you. I won't tell you how to bargain if you don't tell me how to conciliate.

MC GAUGHEY: I hope we do as good a job of bargaining as you do of mediating.

HESS: Let me talk very quickly to the others. Come in!

TWO SCHOOL BOARD MEMBERS AND SUPERINTENDENT COME BACK IN AND TEACHERS LEAVE...CERTAIN AMOUNT OF CONFUSION WITH PEDERSEN COMPLAINING ABOUT WAITING, ETC.

HESS: Let me assure you. I think your teachers' representatives are interested in having a good school system, and in having a sensible relationship with you.

LARSON: They agreed to go it our way then.

HESS: Not exactly. I'm going to suggest to you, Mr. Larson, that you give some serious consideration to agreeing to some alternatives. Let me go through them quickly. Number one is the proposal of the faculty for formal recognition which seems to be the best course for you to follow. It makes sense, it avoids the sort of thing you may well get into if you don't follow this procedure. However, let me suggest forgetting about the word "formal" recognition and that instead, the parties agree to cooperate.

SUPT. LA VALLEY: Well, there'a a lot of difference between those two terms, formal recognition and coooperation.

HESS: Yes, but let's suppose that you and perhaps two members of the school board and the teachers' representatives meet at mutually agreed times. This would be consistent with your schedule...

LARSON: Once a year or something like that?

HESS: Mr. Larson, you yourself said you want a tight ship, a happy faculty. We're not talking about meetings once a year. We're talking about meetings when needed. Does this make sense, Mr. LaValley?

SUPT. LA VALLEY: Yes, I think it can be arranged.

HESS: O.K. Second, on the question of grievance procedure. I want now to advise you that this group of teachers was seeking final and binding arbitration, Mr. LaValley.

LARSON: What is that? What's that?

HESS: Well, this is a very typical end point of the grievance procedure in labor agreements, Mr. Larson. You ought to know since you once dealt with a union. I was well aware of the fact that this could be a stumbling block in the question of reaching an agreement. They've conceded this point. I think they will agree to a three-step procedure I am suggesting. The first step is between the teacher and Superintendent LaValley; this exists now with respect to grievances. If there is no solution at this point, step two is between the school board and/or their representatives and the teachers' representatives. Finally, if again there is a deadlock, the

HESS (cont'd). grievance would be submitted for purely advisory opinion to a third party. There are at least two agencies available to provide an advisory opinion. That's what I'm doing here today, advising you.

SUPT. LA VALLEY: I don't know about that...

HESS: Now the third point is the question of duty-free lunch periods which is a strong issue. It doesn't seem so significant to me but it is to them.

LARSON: Mr. LaValley told them what we'd do on it.

HESS: Well, they say in other school districts with a rotation system, each teacher has to have lunch with the children no more than two or three times a month. You're talking about having only one day free in a week.

SUPT. LA VALLEY: We've looked at that and it would require hiring more people. We're not going to do that.

HESS; Mr. LaValley, under the present system and the size of the faculty, is it at all possible that they will have duty only once a week?

SUPT. LA VALLEY: Well, Mr. Conciliator, I've been thinking about these points and as superintendent, I think I have responsibility to take a position. On number one as you've outlined this cooperation, I will speak up and say all right on that. But on the second one, the grievance procedure, I think that's my responsibility as the principle administrator for the school district. I'm not sharing it with anybody else. I can't agree with this. You went pretty fast over the salary. We are going to have to get approval from the board to do anything of this nature. On your number four issue of more free time during lunch periods, you are suggesting that we try to work out some kind of system so that teachers have such duty once a week. Let me ask you this. On issues one, two and four, we really haven't got to three, have the so-called teachers' representatives agreed to recommend these solutions?

HESS: Mr. LaValley, I'm relatively certain that the faculty committee will recommend to the faculty these solutions of one, two and four, assuming there is some sort of an agreement on the issue of salaries.

SUPT. LA VALLEY: Are they still talking about that metropolitan rate and structure?

HESS: They seek parity with the metropolitan area. I don't know what the difference is.

LARSON: Can't do it. Can't do it.

HESS: Well, all right. Let me offer this as a suggestion--that this board consider meeting those increases granted in the metropolitan area which would in effect preserve the differential that now exists.

LARSON: We can't make decisions on this; it has to be the full board. We don't have the authority.

HESS: Mr. Larson, how are you setting wages in your plant? I would be willing to gamble that you're making a survey of the conditions...

LARSON: We get people...

HESS: that exist and if you don't pay the salaries that are commensurate to those skills, machinists, etc., you don't have employees.

LARSON: We've had to give some increases...

HESS: There's less than two per cent unemployment today...You're either paying the going rate or you don't have employees. Now all I'm saying to you is to meet what increases are granted in the metropolitan area this time. This maintains the differential that exists and this was not the teachers' approach at all; this was my approach as a solution to the problem.

LARSON: What makes you think you can sell that to them?

HESS: If conditions one, two and four are agreed on, I feel very strongly this committee would recommend accepting all four points. I want to be very careful with you. Remember, it is even entirely possible that the faculty may reject the recommendation of its committee.

PEDERSEN: Well, what are they doing here then?

LARSON: I asked this question earlier. What authority do they have?

HESS: Well, if you've been reading the paper lately, Mr. Larson, sometimes it happens that union representatives agree with the company representatives, and then the membership rejects their settlement...

LARSON: I think you're talking about the machinists thing and the airlines, huh?

HESS: Now these teachers told me that your faculty is stirred up, so I am going to point out to you that you ought to hope that they exercise some leadership with your faculty. I have a strong feeling that if you meet these four points which represent a compromise, it will be firmly recommended to the teachers by this committee.

LARSON: Let me go over this again. I think we're pretty clear on one and two. Number four is quite a change; it's going to be difficult, but if this will help sell number three...

SUPT. LA VALLEY: You know we're going to do that anyhow.

HESS: Mr. LaValley, I heard your remark and I would suggest that this remain private within this meeting, because...

SUPT. LA VALLEY: Certainly, you wouldn't tell them, would you? I think I am on my rights by saying what my position is on one, two and four. This is administration and my responsibility. If the board don't like it, they can fire me and get someone else at less pay. Now on three, this is an action for the board. However, I am willing if I can believe the conciliator here in order to sell this whole thing that if the union committee will recommend this to the faculty, I am willing for one to recommend it to the school board.

LARSON: Do you think we should do the same thing, Pete?

PEDERSEN: I don't know. I'm up for election this year. I don't know...

LARSON: Maybe we can time this thing so the elections come before. Mr. Mediator, do you ever go to school board meetings?

HESS: I can if time permits, Mr. Larson. Let me suggest to you that this be subject to the approval of both the faculty and the board.

PEDERSEN: Can we wait until after...

HESS: Yes, I would think so. It will take some time for them to get approval of the faculty. Do we have agreement, Larson?

LARSON: We will recommend this to the board if this committee will recommend it to the faculty and do it sincerely without their tongue in their cheek.

PEDERSEN: But one other thing, that when this is done, this is the end... We've had all the issues now we can stand. Well, for awhile at least...

HESS: Gentlemen, I think I'll bring the faculty committee in and make my suggestions formally. I prefer to do it this way, to indicate an area of agreement and not to do it privately and have the possibility of some further motion on the faculty committee's part. Do you understand?

HESS STANDS UP AND OPENS THE DOOR TO CALL THE TWO TEACHERS IN

HESS: Gentlemen, I think we have reached some agreement. With respect to the issue of recognition, there will be mutual cooperation, and by this I mean that Mr. LaValley or he and others representing the school board will meet with the faculty committee on mutually agreed upon times. Issue number two, grievance procedure, there will be a three-step process. Number one, between the teacher and the superintendent, then if no solution, between the teacher with his representative and the school board or a designated representative. Step number three, if again the problem is not resolved, the grievance will be submitted to a third party on an advisory basis for an advisory opinion. Do you all fully understand that?

SUPT. LA VALLEY: We'll never have any use for that.

MC GAUGHEY: We're going to use it quite a great deal.

HESS: Mr. McGaughey, I just have to assume that Mr. LaValley and you and your committee will be able to resolve the problems. I want you to concentrate on the word cooperation. This is what's needed. I have assurances from Mr. LaValley that the meetings will be agreed upon. There will be no delays consistent with both of your schedules and the basic problem, which is educating the youngsters.

MAYNE: The teachers want to cooperate, really.

LA VALLEY: So do we.

HESS: On the question of duty-free lunch periods, a possible schedule will be worked out so that teachers will have only one-day-a-week lunch duty. As for issue three, the question of salaries, Mr. LaValley and the board members will recommend to their constituents that the board meet the salary increases granted in the metropolitan area. This comprises the total settlement as my records indicate.

MAYNE: We can recommend it on this basis as far as we're concerned. Is this right, Carver?

MC GAUGHEY: We can recommend it, yes. But we aren't entirely satisfied with the question of salaries, however, for the sake of harmony, we'll go along with it.

HESS: Now you both understand that this is subject to the approval of the board, that this committee will recommend it to the whole school board. The board understands that this is subject to the approval of the faculty and that this committee will recommend it to the faculty. Well, gentlemen, I want you to shake hands and I want to say to you that I appreciate your patience here today. I think what you've done is constructive. I'm very hopeful that what you've done here will bring about the sort of situation that you both desire. Thank you very much.

MC GAUGHEY: Well, we want to thank you, Mr. Mediator. It's been a pleasure.

EVERYBODY SHAKES HANDS.

CHAPTER X

# CONTRACT ADMINISTRATION

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## Introduction

Cyrus Smythe

Contract administration is the other side of the coin of collective bargaining. They are two basic, separate but certainly interrelated jobs. Collective bargaining is to negotiate the contract. Contract administration is to establish some kind of provision whereby you can allow the parties to adjust to the contract and live with the provisions and to provide for settlement of the disputes which inevitably come up during the life of the collective bargaining agreement. This so-called grievance process can either work fairly well or it can work miserably depending upon the philosophy of the parties and depending upon what they want to use the grievance process for. It can work so badly, for instance, that the International Harvester Company found not too long ago that they had a mountain consisting of 55,000 unsettled grievances awaiting arbitration. This represents a complete breakdown and misuse of the system.

I don't think any of us really knows how grievance processing is going to go in the schools and how much it will or will not resemble that of private industry. However, I do think there are some principles which are appropriate to either place. A union is a political organization run in essence by politicians. This has tremendous impact in the sense that the grievance procedure offers a union leader the opportunity to represent his people on an individual basis and to do something for them on an individual basis. It offers to him a genuine political opportunity. It is going to be particularly important in the public school system where there is competition between the education association and the union. There is going to be desire on the part of union leaders to do an extra good job and the association also will compete in this process. I think there will be a great many grievances presented with flair and feeling.

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I'd like to tell you a story which really has nothing to do with grievance process. It illustrates the dangers, I suppose, of the top man who really doesn't know what he is doing, getting into negotiations and the ridiculous situations that can result. This was an airline company who was negotiating with its pilots about two years ago, and it looked like things were going to go for a strike. The pilots had taken a very adamant stand

on the salary issue, and the company was absolutely not going to give in on the matter. The pilots showed every indication of going through with the strike. The president of the company said, "We'll take the strike and we'll show them we can lick them." He proceeded to announce on airways and radio, television and newspapers that they would take no more reservations. He began laying off the ground crew and stewardesses. It was at the last minute, about midnight, when the mediator was able to get the parties to resolve their difficulties and agree to a settlement. The word came in to the president in his office. He was furious, and pounded on the table and he swore to sue them for not striking. The industrial relations man was horrified and dashed back to the mediator. He talked with the president for about two hours to convince him that this would be utter madness, that the settlement they had worked out would be ruined and there would be no telling how long the strike would go. Finally in the wee hours of the morning, after the strike had started because the agreement hadn't been signed yet, they did announce the settlement and the pilots went back and at great expense to the company they made the settlement.

To get on to the subject of contract administration:— The administration and the application of the agreement through the grievance process in American industry generally is the most important part of collective bargaining. This is the real heart of collective bargaining. The negotiations that are carried on yearly or every two years where the contract is signed I would say are really kind of the frosting on the cake. The relationship that develops through the grievance process or the day-to-day process is going to determine whether you have successful collective bargaining or not. In this country we are unique in having a union movement and collective bargaining that really focuses on the day-to-day activity, the grievance process. In England, France, Germany, Australia and the Scandinavian countries, collective bargaining just doesn't amount to much in the shop. Now this has some benefits for the employers in that they don't have to deal with the union in the shop. It also means that they have great difficulties in getting changes through the shop because there is no process by which they can deal with their employees. I think, on the whole, our union strength and the vitality of collective bargaining is related directly to the grievance process. I would guess that teachers are going to follow the rest of the organized groups in the country and use this and see it as a most important part of collective bargaining. I would take it you're familiar with the general form of it. It usually has several steps with appeals to higher authority. It has something of the appearance of a judicial process. Now there are many different ways and many different steps you may have. You may have one kind of procedure for wage-and-salary problems which requires perhaps a great deal of technical confidence or you have to go to the board directly or somebody dealing with the board, or at a high level. There is no use fooling around at the lower level if the problem simply cannot be handled there. Even if the grievance arises at a local level, it may have to go to a higher level immediately. You're probably wiser to drop the intermediate step and get to where you have to go.

If it's a question of pensions, again a technical issue, this perhaps is something that even the local school board can't handle because this is

handled on a state-wide level and the grievance had better go to the state immediately. I would imagine as you work with groups and associations and unions you will work out a variety of grievance processes and I don't think you ought to see it as a particular set form of step. If you deal with a union or association, they will probably insist on having a representative at all the hearings if it involves anything that they have signed or agreed to and this may be very broad or it may not. In most of the contracts I've seen teachers have, they allow the grieving party to have their own representative if it's so desired. Now this resemblance to a judicial process ought not fool you that it is a judicial process. I think that we ought to be realistic, that people who are administrators at higher levels are not apt to be the best judges of those who are below them on the managerial ladder. The problems usually arise because principal or perhaps the superintendent has not complied with the contract or the rules either at the letter or the spirit of the contract as it is understood by the grieving party.

Now if this is a principal who has done the alleged wrong and you appeal to the superintendent, my guess is that the superintendent would be in somewhat of a position to judge this objectively but he is also going to be under some pressure to support the principal. Probably his outlook and interpretation of the contract is apt to be more like the principal's than like the teacher's. In such a case, I would guess in most situations the superintendent is going to interpret and back up the principal's judgment. Not always, but there seems to be a tendency in this direction. So I would say don't be surprised if the teachers demand a third step beyond that, a neutral party, either for fact finding or an arbitrator who gives you a binding decision. I think I've seen it happen in universities where we have outside panelists to judge our students in doctoral examinations. You are more careful in your judgment and in your consideration if you know you're going to have to justify yourself before some other party. I would guess the teachers are going to feel the same way and that they want the superintendent to make very sure he's going to be as objective as he can in dealing with the issue.

The judicial aspect of the grievance process in industry is most apparent in the disciplinary cases. Here it seems to me the industrial relations department can usually act something like a judge, not always, but you can get a modicum of justice here, a judication. I don't know but I would guess that discipline and discharge and such problems are not apt to be the most important kind of grievance problems arising for teachers. You already have customs and traditions to deal with this. I would guess that with such discipline, I can see where teachers would probably want to carry this to the highest possible level to be sure they get no bias, no prejudice against their party.

I think the compliance and administrative functions of the agreement rather than the judicial are apt to be the most important for a school board or school superintendent. First I think it's going to check the powers of the superintendents or the managerial authorities in the school system and second, it means a sharing of the authority, and I think

there have to be some real limits here. I think you're soon going to have to recognize this is what a grievance process means, this is what the implication of the contract is. The superintendent or the principals, whoever is managing, can make the assignments or make the decisions themselves without prior consultation and then the teachers are free to grieve. I would guess that that may not be the best way to handle matters and I would think with a little experience you would find it might be wise in many cases to check with people first and to do some consulting ahead of time with the officers of the local association and then make the decision. Now this means sharing your authority but otherwise you can get yourself in very bad problems with lots of grievances because you didn't understand fully or there was a difference of opinion; many clauses of the contract are very unclear and subject to different interpretations. You act unilaterally without any consultation at all, say on the rotation of teachers to easy and hard assignments, or when and where you apply seniority rights. This can get to be a very complicated, confusing issue and perhaps simply checking with the local representative can help to overcome some of these simple administrative problems and thus save yourself a lot of grievances and disputes later.

I have to recognize that a superintendent in many cases has to act because the decision has to be made now and you can't wait to consult. In such cases I think quite clearly you act, the teachers respond, and then grieve if they have any complaints. This seems to be what is generally required, most arbitrators uphold this, and I would think many superintendents would agree to it. But I do suggest that in so far as possible once you have a grievance process, to make it work well is to use it informally and to try to get as much flow of information back and forth and exploring of problem areas as is possible. Now this means that your job is going to be more difficult, you're going to be responsible for things in which you don't entirely have control. I can't see that this is too different from many of the deals and circumstances and problems that the school board and superintendents handle in the course of every day affairs anyway--dealing with contractors or dealing with textbook companies, dealing with fuel companies, etc. The slogan that many companies learn to use, or that certainly is widely reported in industrial relations texts is that grievances are <u>problems to be solved</u>, not issues to be won. I think on the whole this is a pretty wise one.

There are complaints in school systems such as New York where you have an enormous school bureaucracy. The teachers' rights and the teachers' voice simply get lost in the shuffle. School bureaucrats are simply too afraid to take any initiative. It is in this kind of situation I suspect that the grievance process is going to be most helpful. Now if you have small schools or a small system I would guess a lot of individual bargaining would have to go on. The teacher can see the principal or the superintendent and work out a satisfactory solution to a particular problem. I would guess that this is apt to continue.

A real problem arises with grievances when individual teachers clearly can't make their demands heard or receive any kind of satisfactory solution. Ida Klaus, who is a professional who used to be counsel for the N.L.R.B. and is now on the school board staff in New York City, said she has advised her principals and superintendents to keep grievance procedures pretty formal

at least in the first years that they're dealing with the union. The reason is that everybody's got to learn that there is a procedure. They've got to learn there are certain kinds of restrictions put there with some purpose and until people feel out the system and learn what they can do and what they can't, you had better keep it pretty formal. Now I don't know, but she's a woman of considerable experience, and I would say take that suggestion seriously. I would also think that perhaps she's really talking about a very big system. In a small system you still might want to act as informally as you can, recognizing that you do have these formal procedures. The other danger in acting too informally is simply that you may sell the system down the drain or sell all your authority and whatever rights and responsibilities you have too.

I doubt if you would have anything like this in a school system. I'd hope not, but believe me you can really get yourself tied up in knots if you don't watch the grievance process. I think you'll find that many grievances really have no merit under the contract. People will gripe or grieve about things and you'll say, "What's going on?" because obviously they haven't got a case. There's nothing under the contract that really covers this; what do they expect me to do? I think you ought to take these problems fairly seriously. They may be exasperating, but I think you had better waste a little time because it may pay off in the long run.

It's more likely that when teachers or any people begin to grieve on things that really don't seem to make much sense, possibly they simply want to be heard. They want to express themselves and I think this is fairly important. It's not so much that they want you to change your decisions but they want you to hear what they have to say. They're satisfied because they discussed with the supervisor. They felt they were received with some dignity and their opinions and values received some importance. The answer given is not always as important as the process itself. The grievance process thus can be seen in part as a communication device. Both sides can learn a lot from it. I'd say beware of interpretations of grievances. What they mean is exceedingly difficult. If you get a lot of grievances does this mean you've got some real problems or does this mean you've got a trouble-maker? Well, you're going to have to look fairly carefully.

I come from a faculty in a business school where we've had about 50 and now have about 80. I see the problems growing and increasing. The dean simply cannot meet all the people and deal with the problems. We may have to set up some kind of a faculty procedure to handle matters. But as long as the faculty was small, you could always go to the dean and be heard. He didn't always do as I hoped he would, but at least we had a chance of trying to influence him and oftentimes were successful.

It may be that in a smaller school system collective bargaining with the grievance process will turn out to be something very much like what the actors and musicians have. The grievance process becomes a very informal, personalized sort of arrangement unless there is a

major controversy over payment of wages, in which case it goes to Actors Equity and a panel. The same thing with the musicians. Most problems are handled on a local basis by the particular band or the orchestra. I think this might be a real possibility where collective bargaining becomes kind of a bargaining on minimums, broad minimums, for teachers and the rest of it is handled fairly informally.

I would guess you might have two collective bargaining systems here, one for big systems and schools, and one for small. But in the big systems you're certainly going to get something like the bargaining function which is exceedingly important in the grievance process. It's what I've called fractional bargaining. You don't have the whole unit bargaining but you have groups within the school system bargaining. You may have teachers in a particular school, you may have the high school teachers bargaining or the junior high teachers bargaining. I would doubt that the elementary teachers are apt to bargain; that depends on how many men you get.

Bargaining suggests in the grievance process that the agreement is really kind of a rubber band. You stretch it and pull it and see how far you can go with it. To see the contract as a limited set of rules and regulations is perhaps to misunderstand the dynamics of the situation. This is what was agreed to at one time but that doesn't necessarily mean that a particular group doesn't feel they can get more, using their own strength at a strategic time. I think if they have the power and they have the organization and the ability, they're probably going to use it. My view of all organizations is that it's one of bargaining, individual or collective, and sometimes mixtures of both whether you have a union or not. This is the political nature of organizations, I think. So I don't think this is so great a change as it might first appear.

I know my dean never likes to talk in these terms and he rejects the view completely, but I am sure that I bargain with my dean. We went through a faculty curriculum revision a few years ago and I noticed that when opposition arose here and there, there were talks and discussions. We had to have so much study and committees and interaction until the dean got his curriculum revision and the teachers weren't completely loaded down with a bunch of details.

The amount of bargaining and the kind is going to depend on, I think, the teachers' militancy or their unity and the local leadership. If you have poor leadership, I doubt that you're going to get much of this bargaining because it does take some organization and also depends upon the authoritarian nature of the superintendent and the ability he has to deal informally and to defuse these situations. The grievance process provides a group of bargaining tactics and creates a new power center within the school. It wasn't designed to do this, but I think this is the unintended consequence of setting up a grievance process. First, it gives formal recognition to the group, which it didn't have before, and they have an identity of their own. It tends to unify them a bit more than before. It gives recognition to group leaders, and I haven't looked at many contracts, but a number do give extra time and extra aid to the group leaders in the school. In New

York I think they get an extra period a week in order to handle grievance problems.

Also, most contracts require that the principal or the superintendent meet with the group regularly once a month or as need arises. Second, the grievance procedure itself can be used very effectively to pressure people in administration, and believe me, this can be a problem. Suppose the teachers felt that a principal is interpretating rules and regulations unfairly or he is not abiding by some and is abusing his authority. As one teacher gave me the example, the principal asked us to collect all the egg shells from the kids' lunches and grind them up for a flower bed. This was an actual case. Well, they started flooding him with grievances. He had to sit down and have a hearing on all these and a conference and then give an answer in writing. The principal decided that it really wasn't worth asking the teachers to grind up egg shells.

The teachers may also discover that they can catch principals or superintendents in mistakes and take them up to a higher office and embarrass them. If management in schools is anything like management in industry, management is much more often apt to break the contract or not abide by the rules of the contract than are the teachers. If you get in this kind of a hassle with them, unless you have very understanding superiors they can begin to wonder what kind of a record you're making for yourself. The flood of grievances to higher levels raises concern.

Now these are some of the softest and the mildest uses in bargaining over grievances. You can move in against higher authorities, too. In New York City there is a regulation that only authorized teachers can use their automobiles during teaching hours, that is attendance teachers who go out and catch kids who are not in school or else teachers of homebound students. If any other teachers use their cars, they are not really authorized to do so. But principals have found that is is very useful to ask teachers to go over to another school and pick up some books or filmstrips. So they ask a teacher, why don't you take the last period off and go get the materials? Well, the teacher is willing, he gets a little extra free time. In this particular situation a teacher went over to pick some filmstrips up, had a slight accident on the way back. His back was injured. He didn't think it amounted to very much but it did turn out to be fairly serious. He was in bed for a number of weeks. He used up all his sick pay and after that the school board began deducting his salary for the time he wasn't teaching. He thought he had a legitimate complaint. He took it up to the third level and they said, "You weren't authorized. We have no right to grant you sick pay if you're not an authorized teacher to use your car." The union got quite excited about this. They decided not to take it to arbitration because they weren't sure how the arbitrator might rule under the contract. But whatever the contract said they didn't think it was fair so they sent a letter out the next day warning all teachers that they should not use their cars unless they were authorized. And lo and behold, a lot of the principals found themselves with problems that were rather difficult to meet and the school board quickly got the message and changed

the rules so that the people that were actually on school business and authorized by the principal would be covered by sick pay if they were injured.

Another case which got a little more sticky--a shortage of teachers showed up at the beginning of the school year. The number of per diem teachers who are used to substitute on a daily basis was not as many as had been expected. The principal had the authority under the emergency to assign extra classes. Well, the teachers were afraid to take this to arbitration. They were afraid they would lose because it was quite clear the principal had the authority but they felt that there were other kinds of solutions. One, the principal might have started teaching, as one teacher told me. Then a better effort to get more teachers could have been made. They said they didn't think they really looked at these alternatives.

So the teachers took some fairly drastic action. They came in at 9:40 instead of 8:40. They took their free hour first and what they did was to herd the kids into the auditorium and one teacher would take care of four or five classes. Well, this isn't a very nice situation and it got to be a rather nasty one, I would say. They finally resolved the matter without going to arbitration with a kind of compromise. I'm not sure it changed the situation a great deal, but it solved the problem for the immediate moment.

I don't want to suggest that this kind of bargaining is necessarily typical of what's going to happen with teachers, but I think you ought to be aware that the grievance process is not just a judicatory process nor problem solving, that behind it there may lie some reuse of bargaining power.

It's going to take adaptations of old ways of proceeding but I'm not so sure in a school system it's going to take a great deal. It doesn't mean less bold administration but it does mean more professional and politcally astute and sensitive administration. Some kinds of problems are almost sure to wind up as grievances. The associations are going to be unable to handle them. It becomes a question which the union doesn't really want to press. They would rather have it go to arbitration and have an arbitrator decide itthan to face up to the matters because it causes too much political difficulty within the union.

In New York, for example, as soon as the unions got organized, the hiring of substitutes couldn't be done on a school basis. This was going to have to be done on a centralized basis through the superintendent's office. Otherwise you had too much favoritism in shopping around for good schools by teachers and where we have a racial problem in New York this became intolerable. Substitute teachers could be bounced out simply because they had no seniority. This led to favoritism and demoralization of the teachers. The transfer system had to be centralized almost immediately. Formerly it had been done on an individual basis by individual principals deciding and getting the consent of the two principals involved in schools and the district principal; this led to innumerable grievances and inequities. The arbitrator in a sense said, "Look, you're never going to solve this problem unless you centralize it."

You're probably going to find more grievances at the beginning of the year when a whole nest of new problems arise or at the end of the year when assignments are made than you're apt to find during the year. I would also guess that if the association or the union doesn't have any security, that is, no union shop or dues check-off or exclusive representation rights, you're going to find some kind of problems.

My conclusion is that the grievance process can be an instrument for effective administration in schools. It's going to require a fairly sophisticated administration,I think, at least in the bigger schools, and I would guess you'd find most helpful professionals or people with specialized training in the area to give some guidance here. You may have to revamp some systems, some parts of the system of administration, but I don't think the grievance process is going to be the same. I speak with real diffidence here. I think you're going to have to work out an awful lot of your problems anew and afresh. You have a new kind of technology and a new set of relationships.

CHAPTER XI

# THE IMPACT OF COLLECTIVE BARGAINING ON SCHOOL BOARDS AND SCHOOL ADMINISTRATORS

## PART I

GEORGE COOMBE, JR.
Birmingham, Michigan Board of Education

Battle-scarred veterans of Michigan's legislative and collective bargaining wars affecting teachers and school boards may prove most helpful to school board members of other states if we can provide some meaningful insight in how harmful legislation can be avoided. I am assuming that no legislation requiring collective bargaining between teachers and school boards in this state now exists. Therefore, the first objective should be to keep any such legislation off the books. Should this prove impossible, the objective then remains to assure any ultimate legislation that will recognize the peculiar needs of public education. To attain such objectives preparatory action should be taken now in every school district of this state. Further, there is important business to be done at the state capitol. But first, I turn to the local school district.

Pressures for collective bargaining on the part of teachers' representatives seek relief in the general area of wages and other monetary benefits on the one hand, and on the other, hours and "other conditions of employment." I am not conversant with the salary schedules of the several school districts represented here today. However, I am certain that each of you is fully aware of any deficiencies in those schedules. If salaries in your district are in fact inadequate and unrealistic, you should recognize this fact and move quickly to correct any such shortcomings. To the extent this can be effected by an increase in local taxation, the solution is in your hands. However, it may well prove necessary to increase state aid to local school districts in this state or to revise the entire state school aid program. Each school district board and the state school board association should cooperate to assure an informed and sympathetic legislature.

With respect to hours and "other conditions of employment" much work remains to be done in the average school districts in every state where mandatory collective bargaining legislation threatens. The hobgoblins here are each district's personnel policies. I think it fair to state that few documents have been more imprecisely drawn and more haphazardly considered than the personnel policies of the average public school district. The very nature of their preparation, consideration, and adoption insures anything but order, consistency and common sense.

For the most part, these policies have been formulated seriatim over an extended period of time and each adopted to meet a variety of pressures or emergencies. A school board in a given district today may be amending the personnel policy devised and adopted by that district's then existing board 25 years ago. Further, today's amendment may be drawn in the light of inaccurate interpretation and inconsistent administration of the outstanding policy. Even more important, too many school board members simply

do not know how personnel policies are applied, in the administrative sense, within their districts. I suggest that you not await collective bargaining to gain such an understanding. In this respect the superintendent and staff may prove both a help and a hindrance.

School board members must sit down periodically with the superintendent and review these policies quite apart from the pressures forthcoming in a given personnel crisis. At the same time, school board members must assure themselves that the superintendent knows whereof he speaks when he reports that a given policy is applied, administratively, in a given manner. There is considerable "administrative lag" between an adopted personnel policy and the uniform administration of that policy in each school building. Administrators are human beings and building principals, particularly, often improvise to meet a given personnel situation. Such an ad hoc approach frequently undermines the intent of the adopted policy. Also, administrators have been known to play favorites and teachers have been known to resent this.

Now is the time to discuss the application of policy and its administration with administrators and building principals to minimize potential conflict with teachers and their representatives. Such a discussion probably will bring to light teachers' objections or recommendations regarding existing policy. Review these carefully because they will undoubtedly take the form of collective bargaining demands should appropriate legislation descend.

Next, insist that your superintendent meets from time to time with groups of teachers and opens purposeful dialogues regarding school operations. I have a long standing admiration for school administrators and the manner in which they solve the many complex problems which beset school districts. However, administrators, particularly the superintendent and his central staff, are oftentimes far removed from the "firing line" and many have lost practical touch with the realities of the classroom and the aspirations and frustrations of teachers.

I would urge every superintendent to find the time during the school year to meet with the teachers of each school building and discuss professional problems. Too many superintendents hide behind their building principals and insist that any rapport with teachers must be effected solely within the presence of the building principal in order to sustain and encourage the latter's administrative authority. Many school boards are now finding out that blind reliance on the administrative opinions of the superintendent is foolhardy; a superintendent might well ponder the implications flowing from similar blind reliance by him upon reports of building principals concerning events in the classroom.

Following purposeful review of existing policy and its application in each school building, a school board should revise its policies to the extent necessary. Post-revision conferences among school board members, the superintendent and other administrators will insure uniform understanding and administration.

Apart from the school district, it is most important that each of you effect rapport with state legislators. This is particularly helpful on an individual basis. You should also make sure that understanding exists between your county and state school board associations and those same legislators. Critical here is the need to impress upon each legislator the important distinctions between teachers as public employees and all other employees, private or public. If we in Michigan failed in our presentation to the legislature, it was in this particular area. Too many Michigan legislators, particularly those heavily indebted to labor constituencies, simply refused to acknowledge differences among teachers, other public employees, and private employees and they improperly assumed that all public employment problems could and should be handled in the same legislative fashion as that applicable to private employment.

Be prepared to explain to legislators just how a school district operates in the practical sense. Few legislators understand the important function of the administrator. All too many fail to appreciate the determination of the average citizen to insure continued local control undiluted by the demands of collective bargaining.

The school administrators' association can also be of assistance. Legislators must be presented with a united front of school administrators and school board members throughout the state. But the most difficult task will be to impress upon each legislator the fact that school board members do represent the feeling of the general public. Too often legislators assume that school board members are a separate group of individuals far removed from the realities of the modern world and anxious only to sustain themselves in office. School board members must continually mend their governmental fences. The general public in each of your communities must be aware of the implications flowing from this kind of prospective legislation.

Next, let us assume that a legislative climate indicates some legislation will be forthcoming and that school boards and teachers will be required to participate in some form of collective negotiation. How should this legislation best be shaped to insure maximum recognition of the needs inherent in the teacher-school board relationship?

What is not desired is a collective bargaining statute, as in Michigan, where all public and private employees are swept together under the aegis of a labor statute, pure and simple. Collective bargaining under such a statute has led to serious implications for school districts in Michigan. A parenthetical aside to refer briefly to those jurisdictions where collective negotiations statutes have been enacted might prove helpful. Eight states currently have such statutes: California, Connecticut, Massachusetts, Michigan, Oregon, Rhode Island, Washington, and Wisconsin. The only state so far to establish a separate agency specifically to administer its law covering all public employees is Wisconsin. The Connecticut law vests the state board of education with authority limited to the impasse procedure (mediation and advisory arbitration). None of the three Pacific coast states provides any agency for administration of their new laws. In the other states, the law is administered by existing administrative personnel such as a labor commission, state board of mediation or state labor relations board.

In my opinion it is most important that public employment problems are not administered by the same tribunal and pursuant to the same administrative techniques as those involving private industrial employer-employee relations. Whether, in addition, it might be desirable to isolate school district employees and their problems from other public employment should also be carefully considered. In this connection, review the Connecticut procedure.

In Michigan, we had hoped to develop such procedures within a purely educational frame of reference with ultimate recourse, in the event of impasse, to the Department of Education. We felt that most of the problems raised by negotiation would be essentially professional in nature and their resolution could best be effected by the administrative agency most conversant with the professional needs concerned.

The National Education Association supports the Department of Education approach in its proposed negotiation procedure. Whenever possible the support of this group should be encouraged by school board members in presenting alternative solutions to legislators. In addition, an excellent Final Report dated March 31, 1966, has been issued by the Governor's Committee on Public Employee Relations for the State of New York and this report is worth careful examination. The Committee which developed and issued the report is a blue ribbon one in every respect, and the report itself is the most helpful point of reference for school board members in attempting to understand the nature and extent of the problem. The Wisconsin Association of School Boards has published a helpful pamphlet entitled "Negotiations in Wisconsin Public Schools" which explains the statutory requirements and administrative procedures developed in that state. However, the broad philosophical insight provided by the State of New York report should provide the most significant source material for school board members in those states where final legislation remains to be developed.

As to our experience in Michigan, the first problem resulting from collective bargaining may be defined as the deterioration of public control of public education. Hereunder, it is important to consider the local school district as a political or governmental entity. In the legal sense, a local school district is an unincorporated association somewhat akin to a municipal corporation. This legal animal enjoys, at least in the State of Michigan, a popularly elected legislative government (the school board) and considerable taxing authority.

In the functional sense a school district is of a tripartite nature: teachers, building principals and other professional supervisory employees up to and including the superintendent, and the school board. A school board must create and sustain a climate within which professional employees may fulfill their professional duties to the benefit of students while, at the same time, it must faithfully manifest the opinions of the electors and taxpayers.

It was Dr. Conant who emphasized that public education is far too important to leave in the hands of educators. The average citizen in every state firmly believes this and it is a political reality. Therefore, school boards and their constituents quite properly concerned themselves during the recent Michigan negotiations with the political prerogatives, as defined by law and that they be defended and retained. But the important thing to realize is the fact that these legal prerogatives are under attack as a result of collective bargaining and, in some instances, school boards have been remiss in failing to bargain with this reality in mind.

Let me be specific. The Michigan Education Association developed a lengthy model collective bargaining agreement. One of the more significant provisions proposed, and one which was very seriously demanded by association locals during negotiations, is one which would create a "Professional Study Committee" consisting of an equal number of teachers and school board members. Said committee, it was provided further, would "investigate into any and all problems affecting the operation of the school district and submit a written report and recommendations" to the parties. The model contract also provides for a broad scale grievance procedure terminating in compulsory arbitration. Needless to say, this grievance procedure would be availed of by the teachers' representatives should the so-called "investigation" fail to result in a report or recommendation agreed to by the board members of the "Professional Study Committee" or should any agreed to recommendation fail to be adopted by the school board.

Within a bargaining climate providing for unfair labor practices on the part of school boards but not on the part of teacher representatives, it is understandable that some school boards were willing to agree to this kind of a provision without any real understanding of its implications. But the implications are serious indeed because the school board, in reality, has agreed to give up its determinative or policy role and substitute therefrom the opinion of an arbitrator.

Thus, under the aegis of collective bargaining, an important governmental prerogative has been given up by any school board which agrees to this kind of demand on the part of teacher representatives. Parenthetically, it must be agreed that long before collective bargaining, substantial unanimity among teachers affected by curricula or program change was necessary as a condition precedent to any such change. Then, too, continuing professional discussions on a variety of professional problems are commonplace in any quality school district. However, all such discussion eventually must be translated into a professional proposal; that proposal must be passed on in the first instance by administrative personnel and, ultimately, by the school board. In short, as in every other aspect of business life, someone proposes and someone decides and most decisions are not perfected by a show of hands. The point to be emphasized here is that school boards must constantly be on the alert to assure their constituents that citizen control of public education remains despite the requirements of collective bargaining.

A second important problem resulting from Michigan collective bargaining may be described as the deterioration in professional prerogatives of school administrators.

There may be more distressed "Little black sheep who have lost their way" in this world than public school administrators (now referred to in collective bargaining terminology as "supervisory personnel") but they are not apparent at the moment. Phrased another way, "administrator" or "supervisor" includes every professional person who is not a member of the teachers' bargaining unit defined by the Labor Mediation Board following a recognition election. Formerly, the relationship between these people and classroom teachers was a close and enduring one. After all, most administrators are former teachers. Now, after the impact of collective bargaining, friendships may subsist, although strained, but professional relationships have been irrevocably altered.

Today, in many instances, common professional problems cannot be discussed by administrators with teachers apart from the technical, inflexible, and legalistic requirements imposed by a collective bargaining agreement. A typical example comes to mind. Over an extended period, teachers in a given school, together with that school's administrative staff, have discussed professional problems at the conclusion of classes a certain number of days each month. This informal arrangement frequently resulted in meetings lasting until late in the afternoon. Now, however, a collective bargaining agreement has been negotiated in the school district concerned which agreement provides that teachers are to be paid overtime for all time spent in the school building after 5:00 p.m. at the request of the administrators. Further, that same collective bargaining agreement states that no teacher can be required to stay more than 30 minutes after the close of school unless he has been given a specific professional assignment (which must be "reasonably imposed" following "sufficient" advance notice), and will be permitted to leave at the end of the school day on any occasion where a "reasonable" request is made.

Whether the subject be an informal meeting in a particular school, such as that just described, or a more formal, system-wide arrangement, the problem presented by the collective bargaining agreement is the same. These kinds of professional activities lie at the very heart of the school district. It is wishful thinking to assume that the formal requirements flowing from a collective bargaining agreement will assist in any way to provide better professional rapport between administrators and teachers.

The American Federation of Teachers makes no bones about this situation. It quite bluntly states that its primary objective, apart from higher salaries and greater peripheral benefits, is to end alleged domination of teachers by administrative personnel and substitute therefore a "partnership" whereby teachers and administrators will enjoy "an equal voice" in shaping day-to-day school district affairs. While the Education Association has not been as candid in this respect there is every reason to believe its objectives are exactly the same.

Note that the school board is not the primary target in this respect. On the other hand, the school board no longer can take for granted the professional rapport between teachers and administrators which traditionally existed within a school district and which, in large part,

determined that district's educational quality. Bluntly stated, the teachers know what they are after in this respect and the administrators know what they stand to lose. It is a rude shock, indeed, for an administrator to be introduced to the stark legal language of a collective bargaining agreement between teachers and school boards, with its attendant implications for supervisory personnel.

There are subtleties within subtleties here. The Michigan Association of School Administrators is, in reality, a sub-division of the Michigan Education Association. Quire properly, however, these same administrators are not permitted to be a part of the teachers' collective bargaining unit in a given school district; in collective bargaining parlance, "never shall the supervisor and the supervised meet." Some administrators feel that school board recognition of their members under the aegis of collective bargaining may provide a practical solution. I doubt this since their relationship with teachers, in the legal sense, will not be changed thereby.

It will prove difficult for a teacher who enthusiastically supported collective bargaining while a member of a teachers' union, to accept appointment to an administrative post in the same school organization and suddenly become a member of the "supervisory" team. The prerogatives of management carry with them their responsibilities. Those who wish hard enough sometimes find their wishes granted.

CHAPTER XI

PART II

L. V. RASMUSSEN
School Administrator, Duluth Public Schools

Napoleon Bonaparte is reported to have said: "Let China sleep; when she awakens, the world will tremble." He was right, of course. China is now awakened to her potential for world domination, and the free world trembles as her millions acquire a new technology and a new philosophy of assertiveness.

Two or three decades ago, some pundit of conservative learnings might have said: "Let the teachers sleep; when they awaken the school boards will tremble." He might have been laughed at, but he would have been right. Our teachers have awakened to a new spirit of self-assertion, and if school boards do not tremble, it is perhaps because they have not sensed the inevitability of a sharp and rapid decline in their traditional authority.

Let me hasten to assure you that my attempt at an historical parallel ends here. It is difficult to see a positive outcome of China's awakening, whereas the new militancy of the American teacher could be the dawn of a great era in American education, and even a catalyst of positive force in the chemistry of human development.

I am to speak of the impact of collective bargaining on the role of the superintendent. For reasons that I hope will emerge, it is necessary for me to first summarize my view of the impact on the school boards on the one hand and the teachers themselves on the other. Inevitably, the superintendent is the man in the middle; the impact of negotiations in his case is received and absorbed from both directions. His response to the impact, however, need not be a passive one; he can find a new and creative role.

Here are a few assumptions about the outcome of presently observable trends which seem to me to be irreversible. These will include: the new assertiveness of the teachers already alluded to, the new public awareness that education is the prime implement of our national purpose, the trend toward national uniformity in the educational enterprise, and the overwhelming prospects for "federalization" through increased federal financial support, national assessment of educational goals, and the numerical supremacy of the teachers at the polls and in the lobbies of Congress.

First, the new assertiveness of our teachers. The cry of "Pedagogic Power" is heard throughout the land and it is real power. To speak of "no-strike laws" is to bury one's head in the sand. To deny that teacher sanctions are as potent a weapon as teacher strikes is mere whistling in

the dark. Teachers may withdraw their services with great effectiveness; without infraction of any no-strike statute they may refuse co-curricular duties, or summer school instruction. They may all fall ill simultaneously from an epidemic of obstinacy. And ultimately, I believe, they will simply strike because ultimately they have the power to do so. Actually they are in a far more favorable position than the industrial worker. The public demands their product, and will not tolerate a stoppage. They have contract security, and the knowledge that they have no dollars to lose, no matter how prolonged the impasse at the bargaining table. And, increasingly, the demand for their skills exceeds the labor supply, and they know it.

Our teachers, of course, are an intellectual elite: God help us all if it were otherwise. Because they are professionals, they will bargain successfully not only for salaries, conditions, assignments, and fringe benefits, but for leadership status in the policy-making process itself. We will live to see the total operation of the school system become the accepted and recognized subject of teacher-board negotiations.

Let us examine the implications of a vastly altered consciousness on the part of the general public. For many years, and successfully, we have been selling the idea that education pays off--economically, socially; yes, and militarily--in terms of the total public good. The layman now accepts this; he demands good education, first for his own children, but increasingly for his community as a whole and for the nation at large. Because of this, the teacher has prestige of a new and higher order. Public prestige, in a democracy, is tantamount to power.

Obviously, however, no amount of public prestige will overcome the taxpayer's inherent reluctance to open his purse. Fifty to 90 per cent of any school budget is devoted to salaries, and taxpayer backlash will occur when teacher demands exceed the capacities of the local tax base--and this is already and everywhere occurring. With the educational priority set so high in America today, the clamor will be for more state and federal revenues. It may indeed be the teachers who raise the sharp clamor for general federal aids, but I believe that they will successfully engineer sufficient public support--because of their own numbers, because of their strong and effective lobby, and because the focus of public attention will support them for many years to come.

This broaches the topic of Federal Aid to Education. Public Law 89-10 gave millions for instructional programs, but not one cent for salary tributes to the nation's existing teachers' salary schedule. I will generalize: the teacher as professional may have applauded this windfall for education, but the teacher as an individual resented the fact that this federal generosity had no direct implications for his earning power. Had it been otherwise, had not the federal monies been carefully earmarked for programs, projects and instructional materials, the majority of the funds would have been consumed by escalating salary schedules throughout the land.

Indirectly, of course, federal funds, even as presently dedicated, have implications for the bargaining table. As one example, in a district where

significant funds were to be made available because of impacted area status, teacher-negotiators were fully aware that the Board of Education was expecting a large federal check. They also knew that <u>these</u> federal funds <u>were</u> applicable to the general budget, and this weakened the Board's argument that excessive salary demands would hurt the instructional program.

To educators everywhere, the identification of federal support with the threat of federal control is both spontaneous and alarming. We cannot expect an equivalent reaction from the general public. They will not recognize the threat with the same clarity as those of us who are professionally involved. When we point to the danger, they are apt to tell us that we have lost our right to control locally because we have failed to find effective solutions at the local level. In most cases they have been right. Faced with a choice between a federal bureaucrat in the school administration building, and an increase in the local mill-rate, the voting majority is apt to settle for the bureaucrat as the lesser of two evils.

At this point I'm tempted to say, simply: federal money means federal control. But many don't share my view that the equation is inevitable so let me review the logic. Some form of National Assessment will be demanded by legislators who are responsible for allocations. Some form of National Evaluation will be demanded after funds are spent. Experts will be called upon to define national weaknesses. Federal funds will be allocated with increasing specificity--and that specificity will operate as an instrument of federal control. The question then is: at what point in this pattern of increasing federalization can the influence of the local educator, laymen, and professional, alike, be introduced in a formal way? What role will the superintendent be able to play in maintaining the tradition of local stewardship over the educational process?

First, however, we must examine the role of the <u>teacher</u> in the process of centralization of educational authority. We have already alluded to his numerical strength, with its obvious implications for the federal office-seeker. This numerical strength has other implications--more subtle, but potentially as significant. Each teacher has a daily forum for his ideas and a captive audience for the propogation of his attitudes. Fifty-six million Americans are going to school. Fifty-six million Americans are having their attitudes modified, to some degree, by a professional teacher. We can expect ethical behavior and intellectual honesty from our teachers, of course. But we cannot expect them to transcend the instinctive human impulse to propogate one's point of view--subtly perhaps, perhaps subliminally and in many cases unconsciously--but to propogate it nevertheless.

Numerical strength, public focus and personal prestige all strengthen the teachers' position. Of more direct and visible significance is the directly-operating, highly visible teacher lobby--the most powerful in America today. With 56 million Americans in school, with general acceptance of education as a tool of national purpose, with teacher allegiance to professional organizations growing firmer every day, the lobby can only grow in strength. Teachers already have a strong voice in the Halls of Congress and exerted a powerful influence at the federal level long before

they began to speak effectively in the local board room. As federalization increases, this influence will increase proportionately. It is already true that the NEA and the AFT are working in a strong and unified way at the federal level, regardless of disputes and differences between them at the local level.

The trend toward uniformity is also significant. By this I mean uniformity of teacher attitudes, professional goals--and the very functioning of the teacher in the classroom itself. The significant factors include those federal programs designed to equalize educational opportunity in the 50 states. The increase in teacher mobility also fosters uniformity. The established procedure, in salary negotiations, of comparing the local schedule to those of other districts in the state as the basis for bargaining is another factor conducive to uniformity. To these may be added the factors which apply to all Americans today: increased efficiency of mass communications and transportation. All of these strengthen the trend toward uniformity, a trend which interacts with the others--teacher solidarity and federal financial aid--to accelerate the movement toward greater centralization of educational authority and control.

The board of the future will be divested of its traditional authority, autonomy andpaternalism. Virtuosity on the part of an elected lay educator will be virtually extinct. In most cases, boards will find themselves forced to negotiate directly with the teachers. They may engage in the services of professional labor negotiators, but they will have less and less practical assistance from professional educational administrators, for teachers by and large prefer to by-pass the administration and carry on negotiations outside of the professional context. They have learned from successful experience that it's better to deal with the public and its elected representatives--easier to manipulate public opinion than to manipulate professional concern for the educational objectives.

There will be a resultant loss of prestige for the individual board member. Perhaps more important, there will be a resultant loss of personal satisfaction for the layman in education. The greater his sincerity, the greater will be his disappointment if the majority of the compromises he effects are made at the expense of the educational program. Serving as he does without salary, exposing himself as he does to the vicissitudes of public office, his motivation must come from his sense of meaningful and significant public service. This motivation will decline along with the authority and prestige of the office he fills, and it will be increasingly difficult to attract outstanding men to school board service. This will feed the cycle of decline unless some significant action is taken to stabilize the traditional power structure which is shaking now at its very foundations.

What can be done, then, to bolster the waning strength of the school board? Attention should be directed to the state and national school board associations. Those at the state level are often well supported; at the federal level, the N.S.B.A. cannot point to a record of effective action. Since the N.S.B.A. fought federal aid, the N.S.B.A. was given no role in the formulation of Public Law 89-10. Since the N.S.B.A. has not asserted itself, it has played no role in federalpolicy-making. Those who hope for equality in

educational policy-making in the future, had better start now to support the National School Boards Association. It is the obvious and logical response to the centralization of educational authority that is everywhere in evidence.

This is prologue to the question: What is the impact of teacher negotiations on the superintendent of schools? Most of the factors I have cited seem to indicate that it will be equivalent to the impact of the ball point pen on the blotter, or the internal combustion engine on the one-horse shay. If teachers are to emerge as the dominant force in policy-making, and if teachers prefer to circumvent the superintendent in negotiations, what function is left to the chief administrator of the school system?

I have been offering speculations, assumptions and projections up to this point. As I contemplate the fate of my own profesional specialty, I cannot offer possibilities or probabilities but only hopes. I will discuss them from the level of my highest aspirations because I want to bolster my own professional spirits as much as possible.

I hope, then, that the superintendent of 20 years hence will be the significant third voice in matters of negotiation and policy-making. At the bargaining table where the taxpayer is represented on one side and the tax earner is represented on the other, he will represent the students of his district. He will still be the man in the middle, but he will exert a positive influence in both directions.

He will assist the members of the board in the most important endeavor with which they are charged: competing successfully for a portion of each available dollar on behalf of the instructional program.

He will assist his professional colleagues, the teachers of the district, in their area of greatest inexperience--policy making and implementation.

He will, in fact, be a "new breed" of professional, a "generalist's generalist," a jack of all trades, but master of a new trade, politically sophisticated and capable of formulating society goals and implementing projects with broad societal implications, a man capable of guiding his colleagues toward new heights of professional competence and dignity.

We have said that in the very near future, the entire school program will be a routine subject for teacher-board negotiations, and that teachers have already indicated that they prefer to circumvent the superintendent in the collective bargaining process. These factors virtually eliminate the superintendent's role as presently conceived. We could discuss another factor: the possibility that future boards will rely heavily on professional negotiators--labor relations experts--to assist them at the bargaining table. To the extent to which they do so, the superintendent will find his traditional role even further diminished.

We have said that a trend toward uniformity--in salaries and conditions, and in educational policies as well, will be the order of the future.

This also limits the future superintendents' area of discretion, leaving him little to do but settle grievances over coffee-breaks and smoking privileges.

We have not as yet touched on another factor: it is obvious that the federalism and centralization of the future will mean fewer school districts, and therefore fewer superintendents. This points to the greater generalization of his functions, and calls for a vastly different set of competencies. Unless appropriate professional definitions are reached, the superintendent of the future will operate so remotely from the individual classroom that he will become an administrative bureaucrat who is an educator in name only.

If trained educators are not available to fill the demand for a new breed of superintendents, administrative specialists will be. How then, can we train and select men whose primary commitment will be to the educational process?

Since fewer superintendents will be needed, the number of institutions now training them should be reduced. Perhaps only six or seven universities in the entire nation should implement programs to train the generalist's generalist of the future. A broad liberal arts background will be increasingly important, along with sophisticated and practical training in sociology and political science to augment work in management and administration. A number of our major universities have recognized the need for broader training in the superintendency field, and have modified their programs accordingly; the majority, however, have not kept pace with the times, nor have they anticipated the far more drastic modifications that the future of the profession will demand. This is equally true of their training programs for intermediate administrators which should be instituted on a larger scale. Let us not overlook the obvious implication for the principal and supervisor of tomorrow; he, too, will have less authority, less edict-making power. Even as the superintendent, he will need to enhance his political and social skills and accept a role as creative partner with the teachers of his staff.

Finally, what will be the ongoing work of the new breed of superintendent? What will be his professional priorities and goals?

As we have said, he will be the "educator-in-residence" in relationship to the laymen who serve on the school board. If he is skillful, he will help them to compete successfully for federal dollars on behalf of the educational program.

He will be a "political creature"--by definition an educational politician, and by aspiration an educational statesman. He will try to influence state and local legislation in favorable directions, and to motivate his staff to political effectiveness. Again, the terms "effective" and "favorable"--where the superintendent is concerned--mean effective and favorable for the total educational program and above all, for the individual student.

In his relations with board members, elected officials though they are, it is the superintendent who may be the specialist in political expertise in the future. He will remind them that although their local prerogatives are precious, they must learn to exert their influence at the highest possible level in an age of educational federalism. Perhaps he will remind them of the medical profession in the mid-1960's. With their immense local prestige, doctors might have blocked the Medicare programs which they found so inimical; since their efforts were ineffectual at the national level, they were unsuccessful.

In his relations with teachers, he must be not only a skilled politician, but a highly politic colleague, since his role will present him with many potentials for conflict of interest. Deprived of most of his decision-making power, he must instead help his subordinates to establish guidelines for planning and policy-making. To accomplish this, he may often find it necessary to circumvent his own administrative staff--here, too, there will be communications problems and the necessity for a sweeping realignment of the traditional chain-of-command.

In his relationships with the teacher as collective-bargainer, he will face a creative challenge indeed. The teacher representative of today justifies himself to his constituents by saying, "See, I got you more money, better conditions and better fringe benefits." The superintendent of tomorrow must help to foster a better goal-structure, so that the teacher-representative will say to his colleagues, "See, I helped you to improve the quality of your product; I helped to increase the value of your profession."

In his relationships with the community, the superintendent, if he is to survive, must be capable of formulating broad societal goals, through a deep understanding of the general needs of society. He must be able to spell them out, and he must be able to sell them to society at large. Of equal importance, he must share actively in the development of programs that will achieve those broad societal goals.

Above all, he must act as midwife to the birth of a new professionalism among teachers. Standards are already high,but the future teacher, the generalist-teacher of tomorrow, with his infinitely greater total responsibility, will need an even broader definition of his professional role.

At the practical level, tomorrow's teacher must be a man who is willing to negotiate a salary schedule that gives a better break to the beginner, rather than to the veteran. This must be done if we are to attract the finest possible talent. He must be willing to be uncompromising in weeding out the incompetents who enter the profession. He must not only accept, but demand meaningful inservice experiences; in so doing, he will acknowledge the huge investment that the public makes, through salary increases, in the upgrading of professional skills in education. He must accept responsibility, not only for training and retraining, but for establishing the entrance requirements of his profession. He must realize that it is ethically inconsistent to bargain collectively on matters of policy without accepting collective responsibility for the integrity and dignity of the profession. He must recognize that in assuming a new

authority, he has made himself answerable for the successful attainment of the total educational purpose.

At the philosophical level, tomorrow's teacher must possess the utlimate hallmark of the professional. A true social conscience. He must have a daily recognition that the services he renders are of great and enduring value, and a willingness to convince the public of this fact whenever and as often as they fail to realize it.

These are high aspirations. At the same time, they are minimal in terms of the pattern of the future. In choosing to be optimistic about the future role of the superintendent, I have automatically cast the future teacher in a role of prestige and dignity previously unknown. I believe tomorrow's teachers can, and must, aspire to such a condition of responsibility and high integrity. I believe that the high vocation of the future superintendent--his call to a position of ethical leadership and functional competence in guiding the American teacher to new heights of professionalism--is the most desirable of all imaginable results of the impact of collective bargaining on the role of the superintendent.

We have defined that impact as one of irrestible force and as one containing both a latent threat and a latent promise. The threat to the superintendent is that of obsolescence. The promise is that of a higher and more creative level of stewardship. Obsolescence, as we know, is easy to purchase; it may be had for a pittance of complacency and a modicum of indifference. Creative stewardship is far more expensive; its cost is measured in vigilance and involvement, in foresight and initiative. Therefore, the real impact of collective bargaining on the superintendent today is that he has a choice to make, and he must make it soon.

CHAPTER XII

# GRIEVANCES - IMPASSE

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To begin a discussion of grievances and impasse procedures, let's arrive at a consensus of what constitutes a grievance. In particular, the processing of grievances should be clearly distinguished as differing from, separate, distinct and totally unlike, what goes on in collective bargaining. Collective bargaining is legislative function. The processing of grievances is an interpretative function. It is one facet of the administration of a collective agreement. Grievance processing therefore has implications for the collective agreement as does the agreement for grievance processing.

The collective agreement usually resolves, according to some general format, conflicts of economic nature--salary, hours and working conditions and fringe benefits. Some see the collective agreement as a memorandum of those rights which the employer agrees to transfer or to share with the union. Some view it as a business compact. To still others it is a constitution or a code of relations between the two parties. At worst it is a treaty of peace.

Grievances may arise in the interpretation of this document when school administrators attempt to apply it to specific situations as they arise out of changing circumstances. Such differences between teachers and administrators are a facet of contract administration. When differences over administration of agreements arise there are two basic approaches which may be taken to settle them, short of force.

A legalistic or judicial approach may be adopted. It places emphasis on the wording of the agreement, and assumes the wording expresses the intent. If a mediation or a conciliatory approach is adopted, emphasis will rest with the intent of the agreement. In either case--and if the agreement is properly worded--the results will be the same; resolution of the grievance should not change the code of relations as established in the collective agreement during collective bargaining.

Grievance must be distinguished from complaint. Complaint can mean any dislike which may upset an employee. Grievance is generally taken to mean a difference between employee and employer based on interpretation, application, operation or alleged violation of an agreement.

One academic expert in labor relations identifies five sources of grievances:

1. plain violations
2. disagreement over fact
3. interpretation of the agreement
4. application of the agreement
5. reasonableness of action

I discussed grievances with a manager of a large industrial operation. He used two classifications:

(1) "misunderstanding"
(2) "just plain damn foolishness"

He attributed almost the same proportion of both to management as to employees.

Sometimes agreement is extended to include established policies affecting the employer-employee relation. Lieberman and Moskow imply extension to policy and practice (p. 347). I do not accept this extension. It violates the principle of residual rights of management and is open-ended. Of course, complaints should be investigated but not via the formal grievance procedure. Grievance should be confined to issues arising from the operation of the collective agreement. There is always possibility of dispute about whether an issue is arbitrable or not. I mention this not because it has been a frequent problem but because it is one more reason to confine grievances to differences arising from the operation of the collective agreement.

Without delving into the historical development of grievance procedure in industry it is noteworthy that, in both the United States and Canada, our present approaches to the treatment of grievances have been determined in the past 30 years and particularly since World War II. In Canada all labor statutes have required, since about the end of the War, every collective agreement to contain a clause providing for final and binding arbitration of grievances. If the agreement does not contain such a clause the statutes mandate that it is assumed to contain one specified in the statute, the handout is an example of such a mandate, or that it shall contain one as determined by a provincial agency specified in the statute. Work stoppages are prohibited in Canade during the life of the agreement. A study by the United States Department of Labor shows that of 1,717 major agreements (1961-62) studied, 99% included a procedure for handling grievances. Ninety-four per cent of these provided arbitration as the terminal point.

Do grievance between teachers and school boards frequently result in impasses? We do not have sufficient experience in the United States to answer this question. In my Province of Alberta, where school boards operate under the Labor Act for this purpose, most agreements with teachers include a clause setting up an interpretation committee. Our experience is that grievances seldom reach the terminal point of arbitration. In 20 years plus our largest system, employing almost 3,000 teachers, had one grievance go to arbitration some years back. In the last 18 months it has not had one progress to the second last step of the process, the step involving the school board. However, at one time many grievances found their way to the school board level for settlement.

These are special procedures for the termination of designation of teachers and principals in Alberta. These problems used to cause some extended disputes. The process for settlement is established in the

School Act which provides for binding arbitration as the terminal point. In the whole province we have not had one case go to termination in two years. As I mentioned, the administration of agreements did not always proceed as smoothly.

Other provinces do not have the same type of statute governing collective agreements as exists for Alberta teachers. However, grievance impasses have not rated mention in the various media. Neither have they been a topic during investigations and reviews of labor legislation. Before concluding this section, I should mention that our Canadian agreements are not nearly as extensive as the ones I have seen from Michigan.

Conclusion: grievances are not a major problem once the teacher-board relationship adjusts and matures in mutual respect. Also, the acceptance of binding arbitration as the most common terminal procedure has removed grievances from the impasse category in which collective bargaining falls.

There are, of course, wildcat strikes in industry arising from grievances. One occurred in Canada at an automotive plant just last week. However, these are infrequent and not a serious problem although an aggravating one.

So far I have made the following points. Grievances should only arise from the administration of the contract. Their settlement should not involve a change in the code of relations between the two parties. Grievances seldom go to terminal processes in the Canadian school context. Likewise, well over 90% of industrial grievances are resolved during the first steps of the grievance procedure. Arbitration is the most common terminal procedure for settling grievances. Arbitration has proved to be relatively satisfactory to industry--it is widely accepted and there are no apparent reasons why it should not work equally well in the school situation.

Some school boards may have reservations about accepting binding arbitration because it seems to involve too great a delegation of responsibility and authority. If the agreement is regarded as a legal contract--and this seems to be the tendency--this argument seems extremely weak.

Arbitration is usually effected by a single arbitrator or an ad hoc tripartite representative type board. The single arbitrator or umpire approach is sometimes found in large companies--automobile industry for example--where there are many grievances. The arbitrator serves for a term. The ad hoc tripartite board is the procedure outlined in the handout. Eighty per cent of Canadian agreements specify this approach. It is open to the objection that two members representing the respective parties may adopt the position of advocates. However, it has the advantage of being less open to error if the arbitrators are inexperienced. Since in the United States one can draw on the American Arbitration Association, inexperience may not be a problem. The single arbitrator is probably a speedier process.

There are some potential problems associated with arbitration. The arbitrator may decide whether to interpret the words or the intent of the

agreement. Unless the wording of your agreements is better than that of ten found in Alberta, the award could be quite different depending on the approach. I believe the AAA takes a legalistic approach, emphasizing the words. Some books caution that the arbitrator may arrogate authority. However, the grievance clause in the agreement can be so worded as to circumscribe the freedom of the arbitrator. The arbitrator may also append unwanted opinions to his decision. Tripartite boards especially may try to conciliate the difference between the two parties. This is undesirable in that the arbitration board may then effect a change in the agreement.

Since grievances are a part of the administration of a collective agreement they will have a definite impact on administrators of the school system. They put a premium on effective administration. From the school board's point of view an effective grievance procedure should have two components, one stated in the collective agreement and the other in regulations and policies. The collective agreement should state clearly:

1. the definition of a grievance
2. the formal procedure for the resolution of grievances which should specify:

    a) the maximum allowable time for processing at each step
    b) what happens if time limits are not observed
    c) the stage at which the grievance must be articulated in writing (remember, over 90% are settled at the oral presentation step), in short the who, what, and when at each step

3. the authority of the arbitrator. Usually restricted to applying the agreement or to interpreting it. Keep in mind that the arbitrator is the employee of the disputant parties.
4. procedure for appointment of arbitrator(s)
5. how costs of arbitration are to be met
6. who may bring a grievance--bargaining unit, teacher, board--and who may appear on behalf of the grievor.

It is important to remember that the grievance procedure is a part of the collective agreement. Anything omitted can be inserted only by mutual consent or during the renegotiation of the agreement.

I would expect board and administrative processes to:

1. allow for the easy lodging of complaints
2. provide for prompt but complete, careful and considered investigation of all complaints
3. immediate sifting of complaints from grievances
4. impartial treatment and protection from reprisal for those lodging complaints. This should not be necessary but it is to be remembered that grievances usually originate as redress for alleged abuses of administrative initiative

5. provide for resolution of grievances at the lowest possible level of the administrative hierarchy, thus strengthening line of authority
6. assure informal handling of complaints during primary presentation
7. treat all grievances confidentially
8. support junior administrators when dealing with employees but reprove them privately as necessary. It is essential to prevent administrative leap-frogging.
9. improve operating efficiency

I particularly wish to emphasize that the grievance procedure is a check on administration. It will draw attention to the inadequacies of supervisory personnel. Precisely for this reason it is important for senior personnel to openly support junior staff while privately pointing out means of improvement.

Students of labor relations have observed that grievances are usually brought by employees. Typically, the administration acts on the assumption it is proceeding correctly. The employee can grieve if he feels abused. This is probably the only practical way for administration to function. It is also in line with the principle of residual rights of management. That is, anything not explicitly and clearly covered by the agreement is a right of management.

The formal procedure for the resolution of grievances is a step process which, because management has usually adopted the initiative sets out the steps which a teacher can follow if dissatisfied with the decision at each level. In one sense it is a formal series of steps of appeal to successively higher levels of administration. It is worth noting that management may, therefore, be usually vindicated if it becomes hardnosed, until it reaches the terminal point of arbitration. This is also a good reason for management to exhaust all internal processes before appealing to external ones.

There is no unique and best grievance procedure. It must be geared to the specific school system. And by this I also include the system of teacher organization since every grievance procedure involves two parties. In our small school systems in Alberta grievances are presented to the school board as a second step--almost as a first step. In larger systems many more steps are involved.

There is considerable literature on grievance procedure. For detail I suggest you contact your state mediation service for references which deal specifically with any quirks of state law. Moskow and Lieberman contain a general treatment of the subject and give examples from three agreements on pages 350, 608, and 651.

For a report on Grievance Procedures as gleaned from Major Collective Bargaining Agreements, I suggest you obtain Bulletin #1425 - 1, Nov. 1964, price 45 cents, U.S. Government Printing Office, Washington.

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